S. Hrg. 99-304

NOMINATION OF ROSS O. SWIMMER

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

THE NOMINATION OF ROSS O. SWIMMER TO BE ASSISTANT SECRETARY OF THE INTERIOR FOR INDIAN AFFAIRS

OCTOBER 16, 1985
WASHINGTON, DC

U.S. GOVERNMENT PRINTING OFFICE
54-628 O WASHINGTON : 1985

S411-4

SELECT COMMITTEE ON INDIAN AFFAIRS

MARK ANDREWS, North Dakota, *Chairman*

BARRY GOLDWATER, Arizona	JOHN MELCHER, Montana
SLADE GORTON, Washington	DANIEL K. INOUYE, Hawaii
FRANK H. MURKOWSKI, Alaska	DENNIS DeCONCINI, Arizona
JAMES ABDNOR, South Dakota	QUENTIN N. BURDICK, North Dakota

PETER S. TAYLOR, *Staff Director*
MAX I. RICHTMAN, *Minority Staff Director*

CONTENTS

WITNESSES

Page
Boren, Hon. David L., a U.S. Senator from the State of Oklahoma 2
Colegrove, Wilfred K., chairman, Hoopa Valley Business Council, Hoopa, CA, accompanied by Dan Jordan, councilman; and Ms. Fran Arers, tribal attorney 43
  Prepared statement on behalf of the Hoopa Tribe 46
Harris, LaDonna, president, Americans for Indian Opportunity 42
Nickles, Hon. Don, a U.S. Senator from the State of Oklahoma 3
  Prepared statement 5
Parker, Alan R., president, American Indian National Bank, Washington, DC 24
  Prepared statement 27
Swimmer, Ross O., nominated to be Assistant Secretary of the Interior for Indian Affairs 7
  Prepared statement 10
Trimble, Charles E., president, Tribal Ventures, Inc 34
Youngdeer, Robert S., principal chief, Eastern Band of Cherokee Indians 36
  Prepared statement 38

ADDITIONAL MATERIAL SUBMITTED FOR INCLUSION IN THE RECORD

Swimmer, Ross O., letter dated November 6, 1985, containing responses to a November 4, 1985, letter from Chairman Andrews to Interior Secretary Donald P. Hodel 20

APPENDIXES

Appendix A—Materials pertinent in the confirmation of Ross O. Swimmer to be the Assistant Secretary of the Interior for Indian Affairs 63
Appendix B—Statement of Suzan Shown Harjo, executive director, National Congress of American Indians 97

NOMINATION OF ROSS O. SWIMMER

WEDNESDAY, OCTOBER 16, 1985

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10:25 a.m., in room 325, Russell Senate Office Building, Hon. Mark Andrews (chairman of the committee) presiding.

Present: Senators Andrews, Gorton, and Abdnor.

Staff present: Peter S. Taylor, staff director; Michael Mahsetky, attorney; Irene Herder, secretary; Lynn Toledo, secretary; Pat Zell, attorney; Jane Wrenn, staff attorney; and Ginny Boylan, attorney.

Senator ANDREWS. The committee will come to order.

My apologies to my colleagues from Oklahoma who are here. I was late because the Senator who was supposed to relieve me in the Chair failed to show up, so I was in that mundane job. If it inconvenienced your schedule, I'm sure the Republican Cloakroom will apologize to you. [Laughter.]

I don't know what it's going to do with our Republican colleague from Oklahoma. Probably the same thing it does for me.

Our hearing this morning is on the nomination of Ross Swimmer to be Assistant Secretary for Indian Affairs of the Department of the Interior. It was received in the Senate and referred to the Select Committee on Indian Affairs on September 30 of this year. After the resignation of Kenneth Smith in December 1984, this vital position was filled by the Deputy Assistant Secretary, John Fritz, who served in an acting capacity until early September, when he resigned.

Mr. Swimmer is 41 years of age. He is married. He has two children and currently resides in Tahlequah, OK. He is currently president of the First National Bank of Tahlequah and also serves as principal chief of the Cherokee Nation of Oklahoma, a tribe with approximately 45,000 members. He has held both of these positions since 1975. Mr. Swimmer served as cochairman of the Presidential Commission on Indian Reservation Economies, which filed its report to the President on November 6 of last year.

The Assistant Secretary for Indian Affairs is the chief administrative officer of the Bureau of Indian Affairs, an agency which employs approximately 12,000 permanent employees and has a budget of slightly less than $1 billion, not including appropriated tribal funds which accounts for an additional $500 million.

The responsibilities of the BIA are extremely broad, covering provisions of most services normally provided by State and local governments, except for health care which is provided by the

Indian Health Service at HHS, and new housing which is provided by HUD. BIA has the additional responsibility of administering the trust responsibility of the United States toward lands and natural resources owned by the tribes or held by the United States for individual Indians.

Here to introduce Mr. Swimmer this morning are Senator David Boren and Senator Don Nickles, both of Oklahoma. Senator Boren is the senior Senator. I would assume that you would proceed first. Good to have you before our committee.

STATEMENT OF HON. DAVID L. BOREN, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator Boren. Thank you very much, Mr. Chairman. It is a real pleasure for Senator Nickles and me to appear this morning and to introduce to you Ross Swimmer, who is the President's nominee, as you have said, to be Assistant Secretary of the Interior for Indian Affairs. We carry out this task with great enthusiasm.

As you know, the State of Oklahoma has a special interest in Indian affairs. We have more Indian tribes resident within our boundaries than any State in the Union, and according to the last census have more Indian citizens than any State except the State of California, and, or course, we have the highest population in terms of the size of our State.

We are very pleased that we have an Oklahoman of the capabilities of Ross Swimmer making himself available for public service in this capacity. He has served as principal chief of the Cherokee Nation, and during the time that he has served in that capacity, the income of the tribe has grown from $5 million a year to $20 million a year, largely through the economic diverisfication efforts which he has undertaken. The tribe has created jobs in a whole series of businesses and industries, ranging from the restaurant and motel business to the nursery business to electronics manufacturing, even winning some Department of Defense contracts.

He has also gathered together a very skillful management team at the tribe to provide necessary services—medical services, nutrition services, Head Start centers, college scholarships, and job training. More than 2,000 new homes for his people have been built during the time that he has been chairing the tribal government. A new hospital opened in December 1983, was a special project of Chief Swimmer for which he made a very long and diligent fight.

Not only has he been an outstanding tribal leader, but he also is an outstanding businessman in his own right. He has served as the president of the First National Bank of Tahlequah. He is an attorney, and my own acquaintance with him goes back to our law school days at the University of Oklahoma. I might say, to prove that I do know his background very well, we are also well acquainted with his wife, Margaret, who is an outstanding attorney in her own right, graduated first in her class at the University of Tulsa Law School, and had the good judgment to be delivered into this world by a country doctor who was my wife's grandfather. So the friendship between our families goes back a long way.

It is knowledge on my part of his integrity as well as his ability that brings me here this morning to recommend his confirmation to you with great enthusiasm. I think you can see from this record the innovative approaches that he has taken to tribal independence and to diversifying the tribal economy. His experience with both nonreservation and reservation Indians by serving on the Presidential Commission on Reservation Economics, uniquely qualifies him for a very difficult job.

If there was ever a time when we need creativity, in which we need new thinking and new direction in our policy of dealing with our Indian citizens and capability at the helm, it is right now. I think in Ross Swimmer we have a person uniquely qualified, and I am very, very proud to be able to be here this morning and join with Senator Nickles in presenting him to the committee.

Senator ANDREWS. Thank you very much, Senator.

Let me ask you just one question. I will ask the same one, of course, of Senator Nickles. Other than the fact that his wife happened to come into this world at propitiously the right time, I am sure there are a number of other reasons—many of which you elucidated—that you are supporting him. Let me ask one direct question: As the senior Senator from Oklahoma and a Senator representing the other political party from the one that nominated Mr. Swimmer, do you know of any reason at all why Mr. Swimmer wouldn't be an outstanding head of the BIA?

Senator BOREN. Mr. Chairman, we have searched his record, and you have touched on the only negative point we can find, that being his political party affiliation. [Laughter.]

Otherwise, as I have said, by integrity and by ability, just looking at his own record and seeing what he has done in the Cherokee Tribe, I think you can see for yourself. That record speaks for itself, and he has the kind of qualifications that we need in this job, so he certainly has an enthusiastic bipartisan recommendation from our State.

Senator ANDREWS. Well, I appreciate that, Senator. Now what we have is that not only did his wife pick the propitious moment to come onto this Earth, but he picked the proper political party. [Laughter.]

We have established both those points, and I appreciate your candid support.

Senator Nickles.

STATEMENT OF HON. DON NICKLES, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator NICKLES. Thank you, Mr. Chairman.

I join with my colleague, Senator Boren, in a strong recommendation of Ross Swimmer for Assistant Secretary for Indian Affairs. I have had the pleasure of knowing Ross Swimmer as a friend and also as an associate for the last several years, and I know that he is a man of the highest integrity. There is no doubt in my mind that he will do an outstanding job.

As chief of the Cherokee Tribe, and there are 67,000 members of the Cherokee Tribe, Mr. Chairman—that's our Nation's second largest Indian tribe—he has been highly successful. He has also been successful as an attorney, a businessman, and a banker.

Since he was first elected chief in 1985, the Cherokee Nation has made a tremendous deal of progress. As you know, 1975 was the year that the Indian Self-Determination and Education Assistance Act was made public law. This act has been really the model of President Reagan's Indian policy, and no other tribe in the United States has exemplified its successful use as has the Cherokee Nation.

The tribe currently owns and operates several businesses which are providing job opportunities to its members as well as providing significant revenue. These business operations range from a greenhouse and nursery to an electronics manufacturing company.

Because of Ross' skillful leadership, the Cherokee Nation is economically very sound today, employing over 680 people and managing almost 600,000 acres of land. Since his election, the tribe's assets have grown from $9 million to $34 million. This growth can be attributed to Ross' expertise as a banker and a businessman, having previously served as president of the First National Bank of Tahlequah. His capabilities will prove to be an asset as he grapples with the BIA's budget of approximately $1 billion.

Without a doubt, Mr. Chairman, Ross Swimmer is more than qualified to handle this important job. As you know, the BIA has had numerous problems in the past. Budget cuts and personnel problems have hampered its effectiveness. On a regular basis my office has received complaints concerning the Bureau's handling of various matters.

It is my strong belief that Ross Swimmer will give the type of effective leadership that is needed to redirect the BIA in helping and serving Indians in the State of Oklahoma and throughout the Nation. I wholeheartedly endorse and recommend him to this committee, and I took forward to his quick approval through this committee and through the floor of the Senate.

Senator ANDREWS. Thank you very much, Senator.

[Senator Nickles' prepared statement follows:]

SENATOR NICKLES STATEMENT

Mr. Chairman, it is with great pleasure that I come before you today to speak in favor of the Presidents nominee for Assistant Secretary for Indian Affairs, Ross Swimmer.

Ross has been a friend and advisor on Indian Affairs to me since I took office in 1981. I know him to be a hard working man of the highest integrity. He is a man dedicated to serving his fellow Indian people by bringing about positive changes. His ability to succeed can be evidenced by his work as Chief of the 67,000 member Cherokee Nation of Oklahoma, our nation's second largest Indian tribe. Ross has also been highly successful as an attorney, businessman and banker.

Since Ross was first elected chief in 1975, the Cherokee Nation has made a great deal of progress. As you know, 1975 was also the year that the Indian Self-Determination and Education Assistance Act was made a public law. This Act has been tne model of President Reagan's Indian policy, and no other tribe in the United States has exemplified its successful use as has the Cherokee Nation.

The tribe currently owns and operates several businesses which are providing job opportunities to its members as well as providing significant revenue. These business operations range from a greenhouse and nursery to an electronics manufacturing company.

Because of Ross Swimmer's skillful leadership, the Cherokee Nation is economically sound today, employing over 680 people and managing some 4.42 million acres of land. Since his election, the tribe's assets have grown from $9 million to $34 million. This growth can be attributed to Ross' expertise as a banker and a businessman, having previously served as the president of the First National Bank of Tahlequah. His capabilities will prove to be an asset as he grapples with the BIA's approximately $1 billion budget.

Without a doubt, Mr. Chairman, Ross Swimmer is more than qualified to handle this important job. As you know, the BIA has had numerous problems in the past. Budget cuts and personnel problems have harmed the effectiveness of its operations. On a regular basis my office has received complaints concerning the Bureau's handling of various matters. It is my strong belief that Ross Swimmer is the man that can provide the necessary leadership to bring back the respect and effectiveness the BIA so desparately needs. Our Native American citizens deserve as much.

I would urge this committee's prompt consideration and approval of Ross Swimmer's nomination. The sooner Ross can take the reigns, the sooner the BIA can begin to achieve these positive goals. Thank you, Mr. Chairman, for allowing me this opportunity to speak today.

Senator **Andrews**. As I asked your colleague, do you know of any reason why Mr. Swimmer shouldn't be speedily confirmed?

Senator **Nickles**. No, Mr. Chairman. I think he will do an outstanding job. I think it is an honor for the Indian people of this country to see one of their leaders assume this very important position. As chief of the Cherokee Nation, the second largest tribe in the country, I think it is an honor for him, an honor for the Cherokees, an honor for the State of Oklahoma, and I think he will do an outstanding job.

Senator **Andrews**. Thank you very much.

Senator Gorton, do you have any questions?

Senator **Gorton**. No questions.

Senator **Andrews**. We appreciate very much your coming, and again my apologies for being late.

Mr. Swimmer, if anyone could come with a totally bipartisan and solid backing from his home State, you certainly have. Welcome to the committee. You have a statement. Let me assure you that it will be in the record in its entirely, just as though you uttered every word. If you want to summarize it in any way, we would be glad to have that summary.

STATEMENT OF ROSS O. SWIMMER, NOMINATED TO BE ASSISTANT SECRETARY OF THE INTERIOR FOR INDIAN AFFAIRS

Mr. **Swimmer**. Thank you, Senator. I do choose to summarize, and I would like to have the statement in the record.

Senator **Andrews**. It will be.

Mr. **Swimmer**. I appreciate the opportunity to be here this morning. I certainly appreciate the comments from my State's two U.S.

Senators. I feel concerned that I can live up to the expectations that the people have for me, and hope that whatever we do from now on will be to improve the position of the Indian people throughout this country.

I have given you a brief background in the statement. I won't go into too much detail. The Senators did portray my background accurately. I am by profession an attorney. I practiced law for a number of years in Oklahoma City, dealing primarily in real estate, trust, and corporate work and title work.

I went from there to a position with the Cherokee Nation, at the request of the chief then, W.W. Keeler, joining the Cherokee Nation as tribal attorney first in 1972 and then becoming the general counsel of the Cherokee Nation upon the retirement of Earl Boyd Pierce in 1974. That position was a position outside of the workings of the tribal government, and during 1974 I became employed at the First National Bank of Tahlequah as the executive vice president, and later assumed the position of presidency a little less than a year later.

Upon Chief Keeler's retirement, we needed a candidate to run for the office of principal chief and to become principal chief, and at the time I really had not given it much thought. In discussions with him about 2 months before the election, we decided that it was something that I should do, that the tribe was in need of some leadership to carry forward with some of the goals and objectives that Chief Keeler had started, especially in the area of health care, economic development, education. I chose to run then for that office, was elected in 1975, was reelected in 1979 to a second term, and then in 1983 to a third term.

During those 10 years that I have been in as principal chief, I have seen a lot of problems in Indian country. In my early years I was active in the two national organizations. Lately I have been active in the Council of Energy Resource Tribes and, as was mentioned, last year I served on the Presidential Commission for Indian Reservation Economies. That took me to Indian country and gave me a lot of exposure that I had not previously had, being from Oklahoma and with what we call a nonreservation tribe, but a tribe with a jurisdictional area.

We do at the Cherokee Nation have a sizable land base, and have in trust about 45,000 acres. We originally had 4.5 million acres that was allotted around 1906. Our tribe also has a closed roll. To be a citizen of the Cherokee Nation, one has to prove back to a 1906 roll, and it's quite a complicated procedure but even through that procedure we now have 67,000. We do not have a blood quantum. About 10 percent of our Cherokees are full-blood and then varying degrees from there.

But I think that gives you a little idea that I have had some experience in Indian affairs. I know some of the problems. Obviously I don't know all the problems and I don't have all the solutions. I have worked with the Bureau of Indian Affairs ever since I joined the tribe as the tribal attorney. I have had my share of grievances with the Bureau; I have had my share of success with the Bureau in moving things through and getting support for legislation and doing things that needed to be done for the Cherokee Nation and, I think, for Indian country.

The opportunity presented itself recently for me to accept this position and leave the Cherokee Nation prematurely. It was an opportunity that has caused a lot of long, hard decisionmaking. It is a concern that I have about leaving any elected position early, and because the voters of the Cherokee Nation had elected me to a third term and I have about 1½ years to go. We do have, however, very competent leadership. Wilma Mankiller, our deputy principal chief, ran with me when I was reelected in 1983 and I am confident in her leadership to take over the Cherokee Nation and that she will do an excellent job.

I also feel that the opportunity to do something with the Bureau of Indian Affairs and try and make it the organization that it can be for Indian people and Indian tribes is an opportunity that I really shouldn't pass up. I don't know, as I said earlier, that I can live up to everyone's expectations but I will certainly try to do the job that is necessary to do over there.

Frankly, I have had the opportunity to visit with a lot of field staff—our superintendent, our agency director, staff here in Washington—and I am convinced that there are a lot of good people that work for the Bureau of Indian Affairs. I am convinced that maybe, with my style of leadership, I can do something that is a little different than has been done before and help those good people move in directions that are beneficial to the Indians and the Indian tribes.

I know that we're getting into an era now in Indian country where we need more technical expertise. We are getting into energy development. We are into businesses. We are into social problems—education—some very real social problems on the reservations now, drugs, alcoholism. All these things need to be addressed, and very intently. They are specialty areas, and it's not something that we can address, as we have in the past, with platitudes that say, "We'll take care of that problem." But we've got to get some people in, and those that are in the Bureau, get them trained if they don't have that training to deal with those kinds of problems, and then we just have to make things happen.

I have been in a situation where we have waited for years to get decisions made. I know that people don't purposely delay decisionmaking, but it just seems that we need to move through this process and to take care of problems as they arise.

Again, I am pleased to be here, and would be happy to answer any questions that the committee has. I appreciate your time.

[Mr. Swimmer's prepared statement follows:]

STATEMENT OF
ROSS O. SWIMMER
THE PRESIDENT'S NOMINEE
FOR ASSISTANT SECRETARY - INDIAN AFFAIRS
DEPARTMENT OF THE INTERIOR
BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
OCTOBER 16, 1985

My name is Ross O. Swimmer, and I reside in Tulsa, Oklahoma, with my wife, Margaret, and two sons, Joseph and Michael.

I am honored and pleased to be appearing before the Senate Select Committee on Indian Affairs to answer questions and speak on issues facing Indians and tribes. Since 1972, I have been directly involved in Indian work through the Cherokee Nation and many Indian organizations. Before that, I practiced law with a small firm in Oklahoma City. My legal work emphasis was real property and corporations. My Indian heritage is one-fourth Cherokee and in 1972, being one of a few Indian attorneys, I was asked by Principal Chief W.W. Keeler to join the Cherokee Nation as tribal attorney. In 1974, I was appointed General Counsel to the Cherokee Nation and in 1975, was elected as Principal Chief.

When I became tribal attorney, my family moved to Tahlequah, Oklahoma, the capitol of the Cherokee Nation. We became very involved in the community and helped to bring together a closer association of the Cherokee Nation, Tahlequah, and Northeastern State University. In 1974, the opportunity opened to join First National Bank of Tahlequah as Executive Vice-President. I accepted the position and in 1975, became President. My work experience, civic, and tribal activities will, I believe, help me to accomplish the task of directing the Bureau of Indian Affairs.

The Bureau of Indian Affairs is a microcosm of activities benefitting Indians that are generally provided for non-Indians by the local, state and federal governments. From education programs to trusteeship of tribal lands, natural resources, and monies, the Bureau's scope is enormous. As a tribal leader, I have shared the frustration of waiting for months, even years, for the Bureau to respond with a definite answer on a variety of issues. I have observed reorganizations come and go but attitudes that remain the same. I have also observed some very hard working, dedicated servants of the Indian people that have brought tribes into an era of responsibility, self-sufficiency and commitment that wasn't present 10 years ago.

The Bureau employees face the challenge of being grant administrators and, at the same time, being contract monitors under P.L. 93-638. They seek economic growth through development of Indian natural resources while demanding environmental protection and exclusion of sacred grounds from development. The Bureau spends millions of dollars on education programs, yet seems unable to cope with problems such as literacy rates, substance abuse, dropouts and social development. These are but a few of the conflicts within the Bureau that must be addressed. It will be my position to act not only as the Assistant Secretary working on policy issues within Interior, but also as the chief executive of the Bureau to see that administrative responsibility is carried out by the staff at all levels. My position will be to push decisionmaking down to the lowest possible level with ideas coming up from the same level. The structure of the Bureau is satisfactory although cost savings and efficiency can be addressed by not duplicating decision-making roles.

During my work as co-chairman of the President's Commission on Indian Reservation Economies in 1984, I had the opportunity to visit a number of reservations and speak to tribal leaders. The same opportunities have existed during my work with the Council of Energy Resource Tribes the past four years. It is my belief that Indian leaders know what is needed on their reservations and in Indian Country. Regular consultation with tribal leaders is necessary if we are to accomplish the goals of Congress, the Administration and Tribes. I plan to visit frequently with the elected leadership in Indian Country and the leaders of the national Indian organizations so that issues can be negotiated and resolved in a satisfactory manner.

As the tribes move into new arenas such as energy development, water rights, self-government and economic development, the Bureau must be able to provide quality technical support and the assistance necessary to meet its legal obligations to the tribes. This will require training for personnel in areas they are weak in, and for vacant positions, recruiting people that have the expertise to solve the problems.

I believe the Bureau of Indian Affairs should continue encouraging tribes to take more responsibility by contracting programs that are now run by the Bureau. An integral part of any government is the responsibility to raise money and spend it as is needed for the common welfare of its citizens. Much of the money tribes have access to is now spent by the Bureau instead of tribes. However, we must also realize that some tribes will not move as fast as other tribes toward self-government and we have to be patient. We need to move at the tribe's pace and be aware of the unique circumstances of each tribe. On the other hand, I believe we should encourage and stimulate movement of tribes toward self-government and self-sufficiency through regulations and incentives that reward the tribes that take on these additional responsibilities.

The President has endorsed a policy of self-determination for tribes and a government-to-government relationship. While this may be a euphemism in some respect since not all tribes possess the necessary legal attributes of a government, it none the less recognizes the rights of Indian people to elect their local leadership and to rely on the protection that treaties and laws afford to their particular circumstances. In other tribes it affords them the right of self-government on a footing equal to any other government within this nation with the full exercise of police and taxing powers. It is within this policy that the Bureau will address itself. If confirmed by the Senate, I will provide the leadership to the best of my ability to carry out the challenges implicit in the President's Policy Statement.

Thank you.

Ross O. Swimmer

Senator **Andrews**. Thank you very much, Mr. Swimmer, for your statement.

Last Friday I met with a representative from the White House, reviewed the background investigation conducted by the FBI. I would like to state publicly that I am satisfied that the investigation was full and complete and gave you a clean bill of health.

Nevertheless, there has been talk about the recent grand jury investigation regarding one of your elections as principal chief of the Cherokee Nation. I was told that the FBI checked into it; that the U.S. attorney handling the grand jury is not, shall we say one of your political supporters, and if he couldn't find anything, that probably you are relatively bullet-proof, but I would appreciate receiving your comments on this matter since it is a point that was raised with the committee.

Mr. **Swimmer**. Sure. Since the Cherokee Nation has been allowed by law to have elections in 1971, every single one of the four elections we have had have been contested. I made the comment before that often the election process starts after the vote is counted, and that is partly because of the lawsuits that almost invariably follow a tribal election.

Mine were no less controversial than the first one of Bill Keeler's. The last election involved some people that were very close to me and to my administration. In fact, the fellow that had sought the office of principal chief had been the deputy principal chief for the tribe before.

The election was very bitter and the election was very close. I won the election by 50.4 percent. In our elections we have two large groups of voters, those who vote at the poll and those who vote absentee. There is no particular requirement that one vote one way or the other, and about half of them vote absentee, half vote at the poll, and out of about 12,000 or so voters, that's the way the vote was split.

I was very successful in winning the absentee vote and I was not too successful in getting the poll vote. My opponent had alleged that somehow or other than just wasn't right, that any time you win by more than 10 percent in an absentee vote, that there must be fraud or something wrong. A lot of people took these allegations to the U.S. district attorney. The U.S. district attorney involved the postal authorities.

It is my understanding—I do not have anything in writing that came out of whatever investigative work was done—but in talking with the postal authorities, they explained to me that they spent a very sizable sum of money and a lot of time investigating the election; that they found no errors that were of any consequence, if anything, a simple clerical error here or there. They thoroughly investigated that election and are convinced that there was no wrongdoing, as far as I know, by either side.

The investigation also gave the opportunity for any witness who chose to, to go before the grand jury and testify about any activities of the Cherokee Nation or any related parties, and they presented all that testimony—rumors, innuendos, whatever anybody wanted to say—and that was the extent of it. I understand that there was absolutely no evidence presented that would indicate any wrongdoing on my part or anyone who worked in my election or by any of the employees of the tribe.

Senator **Andrews**. Mr. Swimmer, the report of the Presidential Commission on Reservation Economies, of which you were cochairman—and we have a copy of it—raised a number of serious concerns among the various Indian tribes across the country. Of particular concern was the recommendation for the establishment of an Indian Trust Services Administration, which has been interpreted as dismantling or at least eroding the Bureau of Indian Affairs. What exactly was intended by the recommendation, and what are your current views on the role of the BIA?

Mr. **Swimmer**. The intent of the recommendation for the Trust Services Administration was to focus the need for resources to be spent on the trust activities of the Bureau. What the commissioners saw was, in examining the budget, a fairly sizable growth in what we called the social service side of the Bureau of Indian Affairs, not much grow in resources as far as trust. We entered into an era 6 or 7 years ago of high-energy production, and the Bureau and the Indian tribes were caught without having enough information on their energy resources, on their land and other trust assets, that they were really not in a position to deal effectively, to be competitive, to get the best prices that they could have received, had they had the information they needed.

It was our feeling that we really need to have more emphasis on resource management, on providing tribes this information that they need in order to use their resources. We thought that if the Bureau of Indian Affairs couldn't do it, and frankly we didn't have a lot of confidence that they would or could, that the Trust Services Administration could take that sort of as a program and put some money into it and set aside this real trust responsibility that the Bureau has with Indian tribes toward their natural resources—land and energy.

It was not a recommendation to do away with the Bureau of Indian Affairs. In fact, the report does not reflect that. There was discussion by all of the commissioners about maybe phasing out the Bureau of Indian Affairs over a 5- or 10-year period of time, working into a block grant concept where tribes would assume total responsibility except for this trust relationship.

The commissioners discussed it at length, and the feeling was that it was premature that no one—none of the commissioners, certainly after what we had heard—could determine that 5, 10, even 15 years would be an appropriate time to phase out the Bureau of Indian Affairs. The tribes were at various stages of development. Some tribes, yes, some tribes are doing things that are beyond the Bureau of Indian Affairs' capacity to handle right now. They can very well, and are in fact—have very effective governments. There are other tribes that are at the other end of the spectrum, that need a lot of help, a lot of technical assistance, a lot of handholding, a lot of work.

So it was not the intent to dismantle the Bureau, to do away with it. The intent was to focus on that trust and my position as far as the Bureau is that I think it's an organization that with some management and direction, that it can do those things. Certainly one of the areas that I will be concerned about is that trust area.

I believe that if we're going to deal with complex issues such as water, energy, land, timber, and all the other resources that are in trust with the United States, and if we are going to encourage tribes to get into the management of those resources, we have to give them the information that they need to manage. That requires resources. That requires us doing the surveys, doing the well logs, doing the geology, doing the engineering, and making sure that that information is available to tribes.

Senator ANDREWS. Mr. Swimmer, the Presidential Commission called for an enhanced program of Indian self-determination in contract and grant programs. A continuing problem with these self-determination or 638 contracts has been inadequate provision for the payment of indirect costs. The BIA now appears to be saying that any increase of indirect costs must be taken from program funds. What are your views on the adequacy of funds for indirect costs and the funding formula?

Mr. SWIMMER. Being in a position of a tribal leader, I understand a little bit about that situation. I know that as the Cherokee Nation has grown, we have become very dependent on indirect costs. I know that other tribes feel the same way, and that these indirect costs do tend to support tribal administration—accounting departments, personnel departments, purchasing departments. That's a logical step, I think, toward self-determination, toward self-government. Eventually what we had hoped for is that through tribal businesses, whether it is the ability to tax, whether it's the ability to use its natural resources or income from land or whatever it might be, that the tribes can build their administrations as any other government would, at least those tribes that have that capacity—and that's not all 310 tribes.

I think we have to be careful when we talk about indirect costs and program money, and we have to recognize that it is going to take a certain amount of money to operate any program activity of the tribe. In an indirect way you can't, if you have an accounting department that has 50 different accounts and they have to balance bank statements each month, and they have to have a general ledger and a balance sheet and all, it's hard to break out the accountants' time by these 50 accounts. That's indirect cost, so we recognize that there is indirect cost that has to go into these programs, but I also believe that it is an area that the Bureau of Indian Affairs is going to have to work closely with tribes to be sure that we are spending the money appropriately for those areas necessary to support the program activity, and I don't know what that level is. I don't know yet.

Again, from the tribal perspective, we have been confused about the transfer—whether it's indirect cost, whether it's program money—how much is it that we can use to support tribal administrative costs? Until I have an opportunity to see the budgets on that and get a feel from our program people as to what actually has been spent in the past and what they estimate is needed in the future, it would be hard to give you a yes or no answer—that yes, I would increase indirect cost rates, I would ask for more money, or no, we don't need it. But I would like to do that in consultation with tribes, and it might vary from tribe to tribe. I'm not sure that a standard formula is something that we have to have.

Senator **Andrews**. Mr. Swimmer, we may have, we do have some other questions on this Presidential Commission that we will ask for your answer in writing, so that we can have a full report when your nomination comes to the floor.

On another issue, there are rumors that the Department of the Interior is planning a reorganization of the Bureau of Indian Affairs. Are you aware of any plans for such a reorganization?

Mr. **Swimmer**. No, sir. I don't really want to spend the time that I'll have in this position in going through a reorganization if that can be avoided.

Senator **Andrews**. And you are not aware of any plans from the Department of the Interior to reorganize the Bureau of Indian Affairs?

Mr. **Swimmer**. No. I would hope that I would be given the flexibility to organize the Office of the Assistant Secretary. I feel certain that the Department—I have 100 percent backing from the Secretary and I feel certain that he is going to allow me to organize the Office of Assistant Secretary in a style that I would like to have, and that's just a personal preference. I certainly am not aware of any move by the Department to reorganize at other levels or do something even in the central office.

Senator **Andrews**. Well, there has in fact been some contemplation of it. You are not aware of it, and that may well be—undoubtedly is the case. But my next question follows the first one like the night follows the day: If a reorganization is planned or is proposed in the future, do we have your assurances that the Congress and the tribes will be notified and consulted in advance?

Mr. **Swimmer**. Absolutely. I don't think that any major change in organizational structure within the Bureau should be attempted without having those parties involved notified, and certainly I know they are concerned. I can't say that 310 tribes plus the 100 in Alaska are going to agree to anything that I do, but I think the consultation process is extremely worthwhile. As a tribal leader, I just don't see how you can operate any other way.

Senator **Andrews**. Well, you have our wholehearted cooperation, of course, in what you're trying to do, but let me assure you—and I think I speak for all the members of this committee—we don't like to be surprised.

Mr. **Swimmer**. I appreciate that.

Senator **Andrews**. And we respond a lot better if we know ahead of time what is going to happen. I think as a tribal leader yourself, you know that your fellow tribal leaders across this country like to know ahead of time so that their input can come. Ultimately you have to make the decision but we don't want to, as I said, be surprised.

Finally, before I turn the questioning over to my colleague, there is considerable concern, Mr. Swimmer, about the policy directions of the BIA with respect to Indian schools. The BIA has proposed regulations that would preclude children who are members of a tribe but are of less than one-quarter blood Indian from attending a BIA school if there is an available public school. "Available" is defined as a school within a 50-mile distance that can be reached by bus within 1 hour for children kindergarten through 8, or a 1½-hour bus ride for older children. That might be an easy ride in Oklahoma but it's a whale of a long way to go through a blizzard in North Dakota.

What are your views on these proposed regulations?

Mr. SWIMMER. I am concerned about the regulations. I honestly have not been able to satisfy myself yet on what to do in Indian education, with these regulations or otherwise. On the specific issue of the 50 miles or the 1½ hours, I certainly think there's room for compromise there. To me, you don't put kids on a road for 1½ hours, so we just have to work through that. I think that there are people in the Bureau that are equally concerned and want to work through it. There has been, obviously, some frustration there in developing guidelines.

Also you mentioned a very important thing: It is extremely difficult to have a black-and-white policy that says an hour or 50 miles is OK. You go 50 miles in a blizzard, it's going to take you 2 or 3 hours, and you might not get there at all. On the other hand, some place else it might not be, and it bothers me that we have to be so rigid, that we can't make allowances for situations that exist. I would like to spend some time, a lot of time, reviewing the regulations, and I would like to spend some time with staff and then with the Indian communities, and find out what the thoughts are about education.

I guess—and it might sound a little facetious—but I really, honestly believe that we have to do what is in the best interest of the Indian children. We have to look beyond the staffing, beyond the schools, beyond the tribes, and get their feeling about what is in the best interest, determine that, and then develop the program around it, and I think we can do that.

Senator ANDREWS. Well, some of the people in the cities don't understand what roads are like in some of the more rural States, and particularly on the Indian reservations. I am reminded of the time 2 years ago when the individual who delivered the Sunday paper to our farm—because of course you don't have mail delivery on Sunday—they contract haul for the Fargo Forum, and she was talking to my wife about renewing our subscription for the Sunday paper. She prefaced her remarks by, "Mrs. Andrews, your husband is a very honest man." Of course Mary said, "Well, yes, of course, but why do you bring that up?" And she said, "Well, anyone who has been in public office as long as he has and lives behind roads as bad as he does must be honest." [Laughter.]

Now if you think the roads to our farm are bad, the roads on the Indian reservations I have been on are even worse, and that's why I am concerned about some character in the great bureaucracy down here in Washington saying that a 50-mile ride is OK for Indian children. They just, as the Indians themselves say, "They just ain't walked in those moccasins." They don't know what the situation is out there, and that's why this committee is concerned.

I can assume then, Mr. Swimmer, from your statement that if you are confirmed as Assistant Secretary, you would agree to review these proposed regulations?

Mr. SWIMMER. Absolutely.

Senator ANDREWS. BIA is proposing a moratorium on contracting for new schools if the children to be served live within a certain distance of a public school. If it can be shown that the Indian children would be better served through the opening of a new school, would you support contracting for such a school?

Mr. SWIMMER. That brings up a host of issues involving contracting, the right of self-determination, self-government, the right of schools to be close to the people and the right of the people to decide how they want their children educated, and it gets into that, into the education area that I mentioned before. I cannot say unequivocally that I would support that situation in every case, but I will support it in every case where I think that the best interests of the children can be served.

Senator ANDREWS. Well, that's why I worded my question the way I did. I said if the Indian children would be better served through the opening of a new school, would you support contracting for such a school?

Mr. SWIMMER. If it's possible to do that, I will.

Senator ANDREWS. From my own standpoint, there has been a proposal by BIA to close the Ojibwe contract school at Turtle Mountain in Belcourt, ND. I understand you recently toured that school. What is your opinion of the school, and will you support its continued operation?

Mr. SWIMMER. I was very impressed with the school. In fact, I was so impressed I would like to see some of the people that manage that school manage some of the Bureau schools. They were doing an excellent job, it appeared. I wasn't able to spend more than a few hours there but I talked to staff and was very impressed.

As far as closing that school or not recontracting, I would hesitate to give you a yes or no answer until I have looked at the economics of it and seen what we can do with the schools that are close by. I am anxious to work with Richard LaFromboise, the chairman of Turtle Mountain, and with our education people to see what we can do to bring the creativity and the education standards at Ojibwe to the other schools in the area. If there is a way that we can work it together, I would like to do something like that, but I'll tell you this: I don't want to lose and would do everything I could to avoid losing the standards of education that are at Ojibwe, and if it meant that a merger would degrade the education opportunities, then that would not happen.

Senator ANDREWS. In other words, one, you feel that the children there are getting an excellent education——

Mr. SWIMMER. Yes, sir.

Senator ANDREWS [continuing]. Far better than in many other Indian schools you have seen and, two, that your yardstick is going to be quality of education for the Indian child in any decision you made about this school or other schools.

Mr. SWIMMER. Yes, sir.

Senator ANDREWS. I hate to put words in your mouth, but you did say, "Yes, sir," and you looked like you were saying it very freely.

Mr. SWIMMER. It is a good paraphrase.

Senator ANDREWS. I appreciate your candor in those answers. As I said, we'll have some written questions to complete the record, but I have taken up far more than my time.

Senator Gorton?

Senator GORTON. I want to say that in view of your background, your responses to questions by the chairman have been most impressive. Even the fact that you have occasionally been controversial during the course of your career is, in my view, an asset and not a liability because you will clearly be controversial in the position that you seek to attain.

I do have one very serious question about a parochial matter now before the Department, but it is one which is also general in nature, to which I would like your answer. In the northwest corner of the State of Washington in Whatcom County the Nooksak Tribe has applied to designate to be placed under trust status some 10 to 15 acres of land closely adjacent to an Interstate 5 freeway interchange for the purpose of conducting gambling activities which are permitted but regulated by the State, free of course of State regulation, as our Indian tribes are entitled to do on trust lands.

This location is some 30 miles from any of the present reservations. It is something for which I gather there is at least an indirect precedent. It is also an application which has met with vehement and almost universal objection on the part of the people, the local governments, the charitable organizations, and the law enforcement agencies in the county.

I should like to know what your attitude is on that application specifically, and generally on the proposition as to whether or not it is appropriate public policy to place in trust status lands that are not adjacent to Indian reservations, solely or largely for the purpose of conducting activities in a manner which would not be permitted by State authorities to non-Indians. If it is appropriate for this application to be granted, would it be appropriate if the land were in the middle of the city of Bellingham or the city of Seattle, or were a California tribe seeking trust status for land in downtown San Francisco in order to conduct activities which would not otherwise be permitted on those lands?

Mr. SWIMMER. I believe that the policy of the Bureau has been that it would not support applicants seeking out land to put it in trust, if it were not currently on the reservation, for such purposes. I have no reason not to follow that policy. I would concur in that that as a general policy I would not be seeking out land to put in trust to conduct gambling activities or other similar forms. I think that the courts and certain legislation has spoken to the point that one of the rights of self-government on tribal trust land is to conduct gambling operations not explicitly illegal within the State, and——

Senator GORTON. Well, I think, to be precise, they are gambling operations or other activities which are permitted by the State but under State regulation——

Mr. SWIMMER. Yes.

Senator GORTON [continuing]. And which the tribes can conduct free from that State regulation.

Mr. SWIMMER. Without regulation, and in line with that, a lot of bingo games have opened on the reservations. I am not really in a position to say that I would close all those down——

Senator GORTON. Oh, I'm not asking that.

Mr. SWIMMER [continuing]. Because I think that they are generating some revenues for the tribes and some of those tribes need it. But in the case where we are reaching out to other cities and towns and, as you say, potentially in the middle of a large city a tribe wants to put a piece of land in trust, the general policy I would have is not to do that.

Senator GORTON. That I regard as a quite satisfactory answer, at least on a preliminary basis, Mr. Swimmer. I would appreciate your considering the precise question more carefully and responding to it in writing, if you will.

Mr. SWIMMER. Sure.

Senator GORTON. With that exception, with that, Mr. Chairman, I thank you very much.

Senator ANDREWS. Thank you very much, Senator.

As I mentioned earlier, I have some questions that are written questions that I will submit for the record. Senator Melcher also has, and others of our colleagues may well have written questions that we will submit to you, to make a more complete record before we take your nomination to the floor, and we'll get those to you within the next couple of days.

Thank you very much for an outstanding presentation. It's good to have you here this morning.

Mr. SWIMMER. Thank you. Thanks for your time.

[In regard to the above colloquy, the following letter dated November 6, 1985, was received from Mr. Swimmer containing his responses to a November 4, 1985, letter from Chairman Andrews to Interior Secretary Donald P. Hodel. The letter follows:]

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

November 6, 1985

Honorable Mark Andrews
Chairman, Select Committee
  on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The following responses are hereby offered to questions enclosed with your November 4 letter to Secretary Hodel.

1. Question: As Assistant Secretary for Indian Affairs, which of the recommendations of the President's Commission on Reservation Economies do you intend to implement?

Answer: The Commission's recommendations were based on extensive information gathering and consultation with Indian tribes and individuals. However, the recommendations were the product of the collective thoughts of the nine (9) Commissioners. Since the Report was issued, I have visited with many tribal officials and business people about the recommendations and my response to your question is based, in part, on the information learned from these visits.

House Concurrent Resolution 108 should be repealed or expressly repudiated by Congress. It does not fit the philosophy of the current administration nor, I believe, is the policy in the Resolution condoned by the Congress.

Modernization of tribal governments where needed is important to tribal development. This recommendation was not meant as an indictment of all tribal governments, but is valid as to some, especially those desiring business developments on their reservation. My policy will be to work with tribes that recognize the need for a more contemporary government and management system and assist them as requested.

I would suggest, in lieu of a Trust Services Administration, that stronger emphasis be put on the function of trust within the Bureau of Indian Affairs by having a Deputy Assistant Secretary for Trust and providing resources to address these issues. I do support movement toward block grants on a voluntary basis, better information for tribes regarding their land and natural resource base, and an effort to resolve water rights issues through negotiation and mediation.

The suggestion that tribes privatize their ownership of business is valid but it is a recommendation that must fit the particular circumstances of a tribe. Generally, I believe we need to stress private entrepreneurism rather than tribal (government) ownership of business.

I will continue to promote recommendations that give tribal governments the same status as state and local government, particularly with regard to Section 3 (a) (2) of the Securities Act of 1933 and industrial revenue bonds.

Trust fund investment should remain a function of the Bureau but more management decisions should be encouraged from tribes.

I support the recommendation of an Indian venture capital fund. This can be incorporated through the Indian Financing Act at no additional cost to the government.

I support the recommendation of using the Indian loan guaranty fund to serve as collateral for bond requirements of Indian contractors. Issues involving waiver of tribal sovereignty, developing a climate for business, etc., are important but must be incorporated at the discretion of the tribes.

I believe we need to develop and use a private sector business development model to enhance business start-ups on reservations. This would be available for tribes desiring to get some businesses started on the reservation and give potential entrepreneurs the opportunity to start businesses otherwise not available.

Labor issues such as Davis Bacon Act waivers, right-to-work and applicability of National Labor Relation Board to reservations are sovereignty issues that need to be addressed on a tribe-by-tribe basis.

I agree with the recommendation that tribal training programs should focus on training for jobs that exist or are needed on the reservation. The recommendation of extending the Buy Indian Act policy to all types of federal procurement should be supported. The issue of Indian ownership, contract or employment needs further discussion with the tribes. Something less than 100% Indian owned, managed and controlled business is probably acceptable but there is a concern that "front" organizations will take advantage of anything less than 100%. I believe this can be resolved without an undue burden being placed on the Indian owned company. Enterprise zone legislation is a potential way of generating private business investment in Indian areas and should be supported.

2. Question: Do you support federal legislative regulation of gaming activities in Indian country?

Answer: I believe some regulation is necessary. Presently, over $100 million is being generated every year by Indian bingo. These are cash transactions with no reporting, monitoring or auditing requirements. For the safety of Indian and non-Indian participants, I believe some regulation is needed to insure that games are honest and the people who own the operations have no previous criminal record or ties with organized crime.

3. Question: What specific actions do you propose to assist tribal governments in fostering the development of tribal court systems?

Answer: Justice is a fundamental system of any government. Where tribal courts are permitted, the Bureau must offer training and technical assistance to tribes to insure that court systems on the reservations are properly operated. Further, tribal government must be made aware of the function of a court and be given assistance to organize a court system independent of the administrative or legislative branch of government.

4. Question: What is your position with regard to possible amendments to the Alaska Native Claims Settlement Act that would extend the date on which Alaska Native corporation stock becomes alienable? (Under curent law, that stock would become alienable in 1991.)

Answer: The alienability of stock of Native Corporations in 1991 raises a very important issue. I do not have sufficient information to address the issue fully and I believe consultation is necessary to determine a position on this issue. In any event, the stock should not be alienable unless every stockholder fully understands the consequences of his or her action. If an extension is solicited it should be for this reason, otherwise the issue will simply reappear at a later time with the same consequences.

5. Question: What specific plans do you propose to assist tribal governments in the development of water resource management capabilities and what specific financial resources do you propose to commit to this purpose?

Answer: I believe existing water rights cases should be negotiated wherever possible and I will encourage such negotiations. After water rights have been determined, I would encourage development of tribal water boards for management of these rights. Funds to assist these boards shoud be provided from tribes' abilities to market their water and from Bureau trust administration funds.

6. Question: What plans does the Bureau of Indian Affairs have to consult with tribal governments in preparation of the President's budget request for fiscal year 1987 for programs operated by the Bureau of Indian Affairs?

Answer: Consultation began two years ago when tribes submitted their priority requirements. Further consultation takes place on a regular basis as the budget is developed. I will insist that tribes be aware of the budget process and be solicited for suggestions.

7. Question: In a statement to the joint meeting of the National Congress of American Indians and the National Tribal Chairmen's Association, Secretary Hodel stated that "in the area of land, water, or energy, tribes that want to negotiate rather than litigate will find plenty of technical support to assist in their negotiations." What is your position with regard to the commitment of funds or technical support to tribes that are currently engaged in litigation, or to tribes that desire technical assistance outside of a negotiation or litigation context?

Answer: I believe a tribe must have the information available regarding these issues if they are to represent their positions adequately. Presently, the Bureau is supporting organizations like the Council of Energy Resource Tribes to help get the technical assistance needed. As part of the trust operations initiative, I plan to identify moneys within the Bureau that can be used to provide the technical assistance tribes need for negotiation or development of their resources.

8. Question: It is the Committee's understanding that the funding through the Bureau of Indian Affairs budget for the policy analysis and information dissemination activities currently conducted by the National Congress of American Indians expired on September 30, 1985. Do you intend to authorize funding for the National Congress of American Indians to conduct information dissemination and policy analysis activities in fiscal year 1986?

Answer: I will support funding for this or any other organization that provides a needed service to the Bureau of Indian Affairs or tribes. This organization will be asked to justify its request for funds and provide a product or service of value in order to receive continued support.

9. Question: What is your position with regard to the role that affected tribes should play relative to surface mining reclamation on Indian lands and what role do you envision for the Assistant Secretary for Indian Affairs in coordinating the activities and policies of other agencies relative to surface mining and reclamation on Indian reservations?

Answer: I believe tribes should be involved in reclamation activities and that legislation should be introduced allowing tribes to get access to the funds that have been set aside for this purpose. I will work with other bureaus and agencies to bring about a coordinated response to this issue and get reclamation activities going on Indian reservations.

10: Question: Over the past few years, there has been a gradual erosion of funds to support the tribally controlled community college program. Do you intend to examine the adequacy of the funding for the tribal colleges and assure a minimum funding level so that the colleges can maintain their accreditation and continue to serve the Indian population?

Answer: I do support the concept of tribally controlled colleges and will seek ways to stabilize their funding. We also need to work toward getting them accredited and seek private funding for endowment and general support.

This completes my answers and if I may be of further assistance, please advise.

Sincerely,

ROSS SWIMMER

Senator **Andrews**. Our next witness will be panel 3, David Lester, the executive director of the Council of Energy Resource Tribes, Denver, CO. He will be joined by panels 9 and 10, Alan Parker, the president of the American Indian National Bank here in Washington, and Charles Trimble, president of Tribal Ventures, Inc., of Arlington. Would you three gentlemen please step forward?

What happened to David Lester, who was panel 2? It looks like we've got panels 9 and 10. Well, if you're going to fill in for him, we will accept his, and let me assure you that your statements will be included in the record as though given in their totality.

I might first ask Alan, how is my friend Ben Rifle?

Mr. **Parker**. Mr. Chairman, I saw him about 1 year ago, and he looked in good health then, amazingly, considering.

Senator **Andrews**. He is now retired from your board of directors, I take it.

Mr. **Parker**. That's right. That's correct, but he still keeps a few business accounts with us, and we're glad to have his business and his support.

Senator **Andrews**. Ben and I were the closest of friends, as you know, back in our old days in the House together, and he is really an outstanding individual.

But let me have you proceed with your testimony. As I say, your total statement will be included in the record. You are welcome to summarize it in any way you wish.

STATEMENT OF ALAN R. PARKER, PRESIDENT, AMERICAN INDIAN NATIONAL BANK, WASHINGTON, DC

Mr. **Parker**. Thank you, Mr. Chairman. I will be brief and to the point.

It does give me great pleasure to be able to testify in support of Mr. Ross Swimmer's nomination. As I mentioned in my statement, as a lawyer myself and as a banker, I have great expectations for Mr. Swimmer and his ability to bring to bear some very needed perspectives and discipline to the challenging position that he is assuming.

I had the opportunity to talk with him several times prior to this confirmation hearing and there are a couple of points which I would, with your indulgence, like to amplify on from my statement.

As the American Indian National Bank, we are the only Indian-owned bank in the country that is attempting to serve a market of Indian tribes across the country and provide commercial financing for tribal business ventures. I think this gives us a unique perspective in terms of what is happening around Indian country as the Indian tribes attempt to respond to the situation that is presented to them, some very difficult situations with the national economy, the Federal Government having a declining role with respect to support for business enterprise development; as everyone attempts to grapple with very serious questions of budget deficit and fiscal policies.

The Federal Government does have, under the auspices of the Indian Financing Act, however, a very valuable resource in a program that we particularly find to be timely and useful to the situation. Primarily that's the Indian Loan Guarantee Program of the Indian Financing Act. Our bank, as other banks, has an ability to present to the credit office of the BIA, proposals to have them guarantee a variety of loans that the Indian tribes may be bringing to us.

We think that the role of the Federal Government to support the credit of Indian tribes as they embark upon economic ventures is a very appropriate role. The big challenge that is facing Indian tribes—and I think Mr. Swimmer would agree with this—is the ability to create a viable private sector economy on a reservation and the ability to generate successful business enterprises.

An Indian tribe, however, faces a couple of very unique handicaps as it attempts those kinds of ventures. For example, if their business proposal involves assets which are in trust status, we know that they can't place a mortgage or a lien on that property by way of providing security for the financing. Thus, the Federal Government by stepping in and providing a loan guarantee on that kind of financing plays a role which is very appropriate, considering the fact that it is by virtue of Federal law that the Indian tribe faces these kinds of obstacles.

There is one aspect of the Federal guarantee program that we would like to point out just briefly. That is that at present the guaranteed portion of a BIA loan, guaranteed loan, cannot be purchased with Indian trust funds. As you know, there is about $1.6 billion that is managed by the Bureau of Indian Affairs on behalf of the Indians. These are trust dollars that can be invested only in the most secure kinds of instruments. If Indian trust dollars were available to be put into Indian economic ventures by virtue of purchasing the guaranteed portion of Indian loans, we feel that this could be a tremendous stimulus to commercial banks and other lenders across Indian country as they look at the opportunity to provide this kind of financing.

We think that if the Congress were to take the opportunity to look at what would be a relatively modest type of amendment to the Indian Financing Act to authorize the purchase of the guaranteed portion of Indian loans with Indian trust money on the same basis that right now SBA loan certificates can be purchased and other forms of Government-guaranteed notes, we think that this would provide a tremendous stimulus to lenders across the country. They would know that there is a source of funds that could purchase the guaranteed portion and thus drive the marketplace, so to speak.

I think one other aspect of this that we have discussed with your staff and I have discussed briefly with Ross is that if you had the opportunity to create a mutual fund which would pool these guaranteed securities, you have a device that can go out and, again, drive the marketplace by following a policy of holding a very prudent percentage of its portfolio in the form of BIA-guaranteed loans. These, in our opinion, would be extremely helpful advances in the Federal Government's Indian Financing Act program. These are items that we have talked with Mr. Swimmer about and, given our bank's interest in finding ways to generate access to private capital on the part of Indian tribes and their efforts at business development, we are very much hopeful that there will be some attention focused on these proposals.

These are just two of the items that I have addressed briefly in my statement. I appreciate very much the opportunity to appear before your committee in support of this nomination, and look forward to working with Mr. Swimmer as he takes on these responsibilities, and again we will commend him to your committee for its nomination. Thank you.

[Mr. Parker's prepared statement follows:]

AMERICAN INDIAN NATIONAL BANK

ALAN R PARKER
President

STATEMENT OF ALAN R. PARKER
PRESIDENT, AMERICAN INDIAN NATIONAL BANK

Before the Senate Select Committee on Indian Affairs: Confirmation Hearing on the Nomination of Mr. Ross Swimmer as Assistant-Secretary Indian Affairs, United States Department of The Interior - Wednesday, October 16, 1984.

Mr. Chairman:

It is a privilege to appear before you this morning in support of Mr. Ross Swimmer's nomination to the very critical position of Assistant Secretary for Indian Affairs. Mr. Swimmer's leadership responsibilities as principal Chief of the Cherokee Nation, Chairman of the Board of the Council of Energy Resource Tribes and previously co-chairman of the Presidential Commission on Indian Reservation Economies make him uniquely equipped for this important position. The fact that he is also a lawyer and a former Banker gives him, in our opinion, a distinct advantage in addressing the most pressing issues confronting Indian people today and for the future.

Mr. Chairman, in preparing this statement, I have reflected on the conditions of Indian Country and the Indian people as perceived by the owners and management of the American Indian National Bank. With your permission and on the occasion of this Committee performing its constitutional responsibilities in advising on the President's nomination of Mr. Swimmer, I would like to share these reflections in the hope that they may be of some interest to you. As I am sure you are aware, the American Indian National Bank is the only nationally chartered commercial bank in the United States which is owned and operated by Indians.

The American Indian National Bank represents an ongoing experiment in developing an Indian financial institution that can intermediate between private capital markets and Indian business. By virtue of our role as a specialized lender for Indian businesses across the country, we also serve unofficially as a clearing house of information regarding business development ideas and opportunities in the Indian Marketplace. Through a strategy of developing specialized banking products and services for Indian Tribal markets, we are confident that the Bank will achieve a level of asset growth which will make us a truely national institution servicing all of Indian country.

During the past decade, the goal of Economic self-sufficiency has been articulated by Tribal officials and Indian organization representatives from all sectors of Indian Country and the Indian population. This goal may be more specifically defined as achieving a positive balance of payments in relation to each individual Indian reservation economy coupled with full employment for the Tribal members. Using this general goal statement as a point of departure, I would identify the following areas in which progress in the process of economic development may be measured.

1. Development of a comprehensive and realistic inventory of the natural resource base and economic potential for each Reservation. This inventory would constitute the foundation for compiling a statement of reservation accounts which in turn could provide a tool for measuring the reservation economy and its balance of payments. This inventory should be based on market values and reflect the economic potential in terms used by institutional investors.

2. Each tribal government needs "a state of the art" financial management system. The system is not only necessary to generate accurate information for planning and business dealings but also as a basis for the kind of financial controls which are necessary to gain the confidence of the Tribal constituency and future business partners of the Tribe.

3. Indian Business development specialists have been working toward the development of a comprehensive range of forms and structures for business as well as the ways of doing business that reflect the distinct social values of each Tribe. At present there is much experimentation in the field of Indian economic and business development. The phenomenon of organizing businesses which make it possible for the Tribe to protect its rights to tribal resources and effectively "do business" with the non Indian business world is relatively new. In the past the Federal Government controlled these business relations and Tribal officials acted in a passive role. As management experiences are shared between tribes who have learned ways of structuring corporations and joint venture relationships, the economic potential of Indian country can be achieved.

4. Indian Tribes need to achieve a much greater level of participation in the local and regional economy in order to position themselves and their members to identify business opportunities and develop markets for Indian products. Although we speak of the reservation economy, it must be recognized that Tribal economic ventures cannot exist in a vacuum. Participation in the local regional economy is essential to the preservation and survival of Indian culture and Tribal societies. The past economic isolation of Indian reservation communities has worked to their disadvantage and has formed the basis for opposition to Tribal political goals.

5. A common thread to the above goals is the need to achieve real access to private capital markets. Although the Federal Government should never be relieved of its responsibility to preserve Indian Trust resources, we must be realistic in recognizing the limits of Federal financial assistance. In addition, it is clear that the market discipline that comes with having to qualify an Indian business for private financing is often a healthy experience and a desirable goal in itself. In other words, the development of successful Indian business has to be based on an ability to compete in an open market for private capital and this ability can only be gained through internal discipline and thorough professionalism

It is my experience that a great deal of confusion and misunderstanding persists regarding barriers to Indian Economic progress. There are many things which have been identified as barriers but I believe the most important consideration is simply the lack of real life experience on the part of Indian people in the field of business and finance. Indian human resource development has focused on other areas of professional expertise. In addition, most Indian communities have never had a tradition of entrepreneurship or individual private wealth as the foundation for a middle class which, in any other society, supports private business.

This situation should be seen as an advantage and an opportunity . It is an advantage in that we Indians are not locked into a particular type of business establishment but have the freedom to envision an Indian Society which is based on a futuristic economic system. The opportunity is to formulate strategies for future development designed to make this vision a reality. The focus must be on growth industries which are open-ended instead of trying to attract declining industries. The 55 Million acres of Indian country in the lower 48 is the last undeveloped section of the United States economy. As long as the control over its development rests with the Tribes and their members, we should not fear economic development because it is up to us to define when, where and how it takes place.

. . .

I believe that there is general agreement as to the necessity of articulating a vision of the Indian Tribal future which reconciles a realistic economic self-sufficiency program with Indian cultural values. An essential part of this process is identifying specific policy objectives in the context of a national Indian policy agenda that will give us all a framework within which to develop practical strategies. The following points represent recommendations for future Indian economic policy development which logically follows from the preceding analysis and is respectfully submitted for the consideration ~~for~~ by this Committee~~'s~~ ~~consideration~~ upon the occasion of this hearing.

1. The concept of the trust relationships must evolve and be redefined so as to accommodate Indian control of the development and management of trust resources while maintaining the U.S. Government's Trust responsibility. As a practical matter, this relationship is defined each time an Indian Tribe negotiates a business deal with Bureau of Indian Affairs involvement. Policy formulation whould reflect these actual experiences in such a way as to address Indian concerns about a "new era of termination" while at the same time providing an opportunity for real Indian control. It is my experience that there really does not need to be any change in the legal status in the Government's role so much as there needs to be a change in the attitude of the Federal Government. Of course attitudes are the basis for policy.

2. Existing federal financial resources need to be directed toward development of tribal information and financial management systems. A rather modest expenditure can achieve a great deal if approached on a flexible basis with the decisions resting with each tribal council. The work of such groups as the Native American Finance Officers Association and Council for Energy Resource Tribes have pointed the way for these developments.

3. Federal policy and Tribal policy should emphasize the role which government can play in providing credit enhancement for Indian business development. There is a large body of experience in the field of development finance which establishes that the most productive government role is not to directly finance projects but rather to provide credit support making it possible for business to be financed in the private market place. In addition to guarantees on business and commercial loans, the government can provide support through underwriting or insuring outside investors against political risks. If the federal government is guaranteeing or insuring Tribal Business loans, they should become a secure instrument for the investment of tribal trust funds making possible a form of leveraging heretofore unavailable ~~unavoidable~~.

4. Federal policy should be developed to provide a real access for Indian business into the Federal procurement system. The record today shows there are tremendous opportunities in this area which we are only beginning to understand. A policy commitment at the Presidential level would greatly enhance these opportunities.

5. Policy in support of developing markets for Indian products should be a priority. There is great market potential for such products as Indian wild rice, jewelry, clothing, furniture, etc. Identifying demand will drive the development of these businesses which in turn will provide employment opportunities for Indian Tribal members.

The timing for articulating long range economic resource strategies and policy development goals could not be better. It is clear that directing organizational resources for these priority areas will pay great dividends and will result in an articulation of a compelling vision for the future.

In conclusion, I would like to again thank the Committee for this opportunity to offer this testimony. Although the above discussion represents my personal views and is not intended to reflect the policies or positions of American Indian National Bank and its shareholders, it is certainly based on our collective experience. I would like to extend to Mr. Ross Swimmer my personal congratulations and offer our full support in the future as he prepares to undertake a most challanging responsibility.

Senator ANDREWS. Thank you very much, Alan, for your appearance. We appreciate your coming.

Next, Chuck Trimble. Chuck, it's good to have you here. You have got a lot of expertise in defense contracting on or near Indian reservations. Let me say in my personal observation it has been a great way to provide employment near these reservations. Any information you can give us from time to time on the committee as to how we can enhance that, we would like to have.

But with that preface, let us assure you that your complete statement will be included in the record. Summarize in any way you wish.

STATEMENT OF CHARLES E. TRIMBLE, PRESIDENT, TRIBAL VENTURES, INC.

Mr. TRIMBLE. Thank you very much, Mr. Chairman. My statement is very, very brief and to the point.

Senator ANDREWS. Good.

Mr. TRIMBLE. I am president of Tribal Ventures, Inc., which is a consortium of Indian firms mutually dedicated to economic development on Indian reservations and in Indian communities. I am honored to be invited to testify here, and I would like to restrict my comments to the issue of economic development. Toward that end, I would begin by saying that the appointment of Chief Ross Swimmer to the position of Assistant Secretary is appropriate an very timely.

As executive director in the late 1960's of the American Indian Press Association, and subsequently through much of the 1970's as executive director of the National Congress of American Indians, I witnessed various eras in Indian Affairs, from the termination era through what we term as the era of Indian self-determination. Now we are in a time that can be appropriately termed the era of Indian self-sufficiency.

Of course that term must not be construed to mean that the tribes generally are in a state anywhere resembling that of economic self-sufficiency. Rather, it describes the recognition on the part of the tribal leadership that their goals and their plans must include achieving a measure of economic self-sufficiency for the survival of the tribal governments in the future.

I found that situation described very well in an internal memorandum in the Interior Department's Task Force on Indian Economic Development, and I would like to just briefly quote a passage from that memorandum. It goes like this:

> Tribal leaders are increasingly aware that the current situation, with reduced Federal budgets and eliminated Federal programs, is not a temporary state of affairs that will end with the term of the current administration. It is clear to them that the massive deficit and the equally massive public mandate to eliminate the national debt is a bipartisan concern that precludes any prospect of restoring the Federal programs that resulted in the affluence of transfer payments in the past. The absence of Federal programs, particularly the training and jobs programs, lays bare the true picture of underdevelopment on the reservation and presents a new challenge to tribal leadership * * *.

Now that's a pretty accurate assessment. But the new priority in Indian country on economic development is not merely a reaction to Federal budget cuts. There is growing evidence that the massive social pathology that afflicts reservations communities, that is manifest in family disintegration, violent crime, alcoholism, and alcohol-related health problems, is attributable largely to the chronic state of dependency that pervades reservation life. Our leaders are concerned over that social pathology and are aware that much of the answer to the problem lies in economic development and resultant jobs for their people.

So, Mr. Chairman, this situation constitutes the era of Indian self-sufficiency, and in light of this, there are few if any who are better suited to serve in the position of Assistant Secretary for Indian Affairs than Chief Swimmer. His experience as an attorney, as a banker, and an elected chief of one of the Nation's largest tribes gives him a unique perspective to lead and manage the agency that is the principal exerciser of the Indian trust. His recent experience as chairman of the Presidential Commission on Indian Reservation Economies adds to his credentials to handle the job to which he is appointed in these times of challenge to all Indian country.

Chief Swimmer is faced, as we know, with a very difficult task. The difficult task he faces is that of turning around and moving a bureaucracy that often views economic independence in Indian country as a threat to the very existence of the agency itself. There must be reform in the Bureau of Indian Affairs and there must be significant reorganization there to implement economic initiatives that are needed to meet the challenge of economic self-sufficiency for the tribes.

Now I realize that no leader going into the Bureau wants to proccupy his entire term to questionable reorganization, but in many instances they have got to face the fact that the Bureau of Indian Affairs, particularly in the area of economic development, has not worked, and that changes need to be made.

The report of the Presidential Commission on Indian Reservation Economies very concisely identified many of the problems and inefficiencies that characterize the BIA's administration of economic development programs. Although the more controversial measures recommended by the Presidential Commission, particularly the Indian Trust Services Administration, will not likely be enacted or implemented within the remaining time of this administration, it is important that reform and realignment in the Bureau of Indian Affairs be done expeditiously so that other worthy recommendations of the Commission can be implemented without delay.

We urge Mr. Swimmer to move swiftly to accomplish the reorganization or realignment, or the bureaucracy will stonewall him until his departure. I might add that the bureaucratic obstinance in the Bureau of Indian Affairs has led many frustrated predecessors of Mr. Swimmer into premature departure, and obscurity in the annals of Indian affairs.

In summary, Mr. Chairman, we feel that economic self-sufficiency for Indian country is the principal issue of our time in Indian affairs, and must be accorded its rightful priority in the Bureau of Indian Affairs. We feel confident that Chief Ross Swimmer is the right person for the position of Assistant Secretary and will accomplish much to help the tribes toward their goals of economic independence. Accordingly, we urge his confirmation.

Senator Andrews. Thank you very much for an excellent statement. We appreciate your appearance before the committee.

Our next witness is Chief Robert Youngdeer, principal chief of the Eastern Band of Cherokee Indians, Cherokee, NC. Chief Youngdeer, welcome to the committee. Let me assure you we have your statement. If you wish to summarize it, that would be fine. Please proceed.

STATEMENT OF ROBERT S. YOUNGDEER, PRINCIPAL CHIEF, EASTERN BAND OF CHEROKEE INDIANS

Mr. Youngdeer. Thank you, Mr. Chairman.

Mr. Chairman, distinguished members of the Select Committee on Indian Affairs, my name is Robert S. Youngdeer and I am the principal chief of the Eastern Band of Cherokee Indians. I will summarize my testimony.

Mr. Chairman, I am here today to lend my unqualified support to the nomination of Ross Swimmer to be the Assistant Secretary for Indian Affairs. I believe that Mr. Swimmer has a unique background which more than qualifies him to be the administration's chief policymaker for Indian issues. I know of no Indian person in the United States who is an attorney, and a banker, and who has served as the top elected official of an Indian tribe for over a decade. You could not pick three areas of expertise for an individual to have that would better serve as background for the position of Assistant Secretary.

He will understand and have empathy for the needs of the tribes and of tribal leaders. He will understand and be able to advocate in regard to the unique legal situation the tribes are in relative to their relationship with the Federal Government, and the importance of the fiduciary trust responsibility being vigorously advocated and implemented. And he will be able to use his business and banking experience to assist the tribes in properly investing their funds and in economically developing their reservations to create jobs, tax base, and a better living environment in general than exists today on our reservation.

I suspect that the only issue in which tribes might have some concern about Mr. Swimmer's appointment comes from his connection with the Presidential Commission on Indian Reservation Economies. As do other tribal leaders, I have some concern about certain recommendations from the commission. It seems to me that the recommendations could be succinctly summarized as being privatization of Indian affairs.

I don't think there is any question that our reservations need economic stimulation and that decisions affecting the tribes should be made close to home, and that there are times when excessive Federal Government regulations get in the way. This is not to say that we want the presence of the Federal Government eliminated from the Indian reservations and somehow replaced with private interests. I hope that we learned something from the disaster that was brought to our people by the Indian Allotment Act of 1887. There is now and always will be a need for the Federal Government to support the tribes and to carry out its trust responsibilities, not just over natural resources but relative to the social, educational, and health aspects of our people's lives.

There are aspects of the commission recommendations that are very interesting, and positive, and may indeed help tribes to stimulate their reservation economies, but it will be important for the BIA to fully and meaningfully consult with the tribes and the Congress and receive the sanctions of those entities prior to implementing such policies. Central to such policies should be efforts to help tribes develop a permanent infrastructure within the tribal government, and the establishment of a tax base to support the tribal government. As we have a somewhat unique and successful taxation system at Cherokee in North Carolina, we offer our help to the Swimmer administration in dealing with this most central cog in the development of the reservations.

Mr. Chairman, this concludes my summary of my testimony in support of Ross Swimmer for Assistant Secretary of Indian Affairs. I urge this committee to expeditiously report his nomination to the Senate so that he can take over and give some direction to the BIA. I would be pleased, sir, to answer any questions you might have.

[Mr. Youngdeer's prepared statement follows:]

TESTIMONY OF
ROBERT S. YOUNGDEER, PRINCIPAL CHIEF
OF THE
EASTERN BAND OF CHEROKEE INDIANS
OF
NORTH CAROLINA

ON THE NOMINATION OF
ROSS SWIMMER TO BECOME THE
ASSISTANT SECRETARY FOR
INDIAN AFFAIRS IN THE DEPARTMENT
OF THE INTERIOR

PRESENTED BEFORE THE SELECT COMMITTEE
ON INDIAN AFFAIRS OF THE
UNITED STATES SENATE

OCTOBER 16, 1985

Mr. Chairman and distinguished members of the Select Committee on Indian Affairs,

My name is Robert S. Youngdeer and I am the Principal Chief of the Eastern Band of Cherokee Indians of North Carolina.

Almost 150 years ago the Cherokee Nation was removed by force from our ancient homelands leaving behind our homes, our hallowed land and our heritage. The Cherokees were marched on the infamous Trail of Tears to Oklahoma. However, a number of Cherokee people hid out in the hills of the Smokey Mountains and refused to go west. Others, who had marched west, returned and soon after the removal we were divided into two seperate tribes; the Cherokee Nation of Oklahoma and the Eastern Band of Cherokee Indians of North Carolina. Each tribe has its own government and we function completely independently of one another. Since that time, both tribes have experienced sufferings and triumphs. Yet as we remember our past we must prepare for our future. As we move forward toward a new century, we are faced with many important issues. While we have made progress, much remains to be done. It is in these times that we will need strong leadership and it for that reason that I am delighted to be testifying at the confirmation hearing of the first Cherokee Indian to be nominated as an Assistant Secretary in the Interior Department.

There are three things in my life that I am the most proud of. The first is my service in the military to my country. The second is my selection as the 23rd Principal Chief of the Eastern Band of Cherokee Indians. The third is my part in the first ceremonial reunion of the two Cherokee tribes which took place at Red Clay, Tennessee, our ancient historical grounds on April 6, 1984 in which our tribes honored each other.

Mr. Chairman, I am here today to lend my unqualified support to the nomination of Ross Swimmer to be Assistant Secretary for Indian Affairs. I believe that Mr. Swimmer has a unique background which more than qualifies him to be the Administration's chief policy maker for Indian issues. I know of no Indian person in the United states who is an attorney and a banker, and who has served as the top elected official of an Indian tribe for over a decade. You could not pick three areas of expertise for an individual to have that would better serve as background for the position of Assistant Secretary. He will understand and have empathy for the needs of the tribes and of tribal leaders, he will understand and be able to advocate in regard to the unique legal situation that tribes are in relative to their relationship with the federal government and the importance of the fiduciary trust responsibility being vigorously advocated and implemented and he will be able to use his business and banking experience to assist the tribes in properly investing their funds and in economically developing their reservations to create jobs, a tax base and a better living environment in general than exists today on our reservations.

Given all these qualifications. I still must wonder why he wants the job, for it is a somewhat thankless position in which the holder seems to frequently find himself between a rock and a hard place. This may be an appropriate time to examine why this is such a difficult position. The Reagan Administration, in supporting the legislation to statutorily make permanant the position of Assistant Secretary, has clearly indicated that the person who fills this position is the main policy maker for Indian issues. As such, the Assistant Secretary is the principal advocate for Indian people in Washington, D.C. The problem that I see is that the PBA office in the Interior Department, and even more so, the Office of Management and Budget (OMB), an office whose jurisdiction should primarily be over financial matters, have instead become the policy makers. It is a classic example of the tail wagging the dog. Ross Swimmer will need the strong support of OMB and PBA if he is to successfully articulate and implement policies aimed at helping the tribes to develop. He will need assistance from this Committee and from the Interior Appropriations Subcommittee as well. I urge OMB to stop making Indian policy decisions based on how that policy will effect the federal deficit. President Reagan has stated that Indian programs are to be protected from budget cuts as they are protected under the "safety net". Yet, the same Administration has repeatedly proposed large cuts in Indian programs that are vital to the tribes, demonstrating an indifference to a people who are on the bottom of the scale of every socio-economic indicator used in the United State. I can not urge too strongly that Ross be given the support, both financially and in decision and policy making, from the rest of the Administration that will be vital for him to succeed.

I want to recommend that the Assistant Secretary should hire an attorney well versed in Indian law to serve as Counsel to the Assistant Secretary. Even though Ross is an attorney, he will be far too busy dealing with administrative and policy issues to act as his own counsel. Because the relationship between tribes and the federal government is so fundamentally based on the law, it will be absolutely vital for Ross to have his own Counsel, a person who will be independent of the Interior Solicitors office and the built in conflicts of interest which are inherant to Indian interests in the Solicitors office. (This is not to say that there is not a need for a strong advocating voice in office of the Associate Solicitor for Indian Affairs). I also hope, and would urge, that Ross be given the authority to chose his own deputies, to assemble his own team, to name his own Division Chiefs and to get rid of some of the dead wood.

I suspect that the only issue in which tribes might have some concern about Mr. Swimmers appointment comes from his connection to the Presidential Commission on Indian Reservation Economies. As do other tribal leaders, I have some concerns about certain recommendations from the Commission. It seems to me that the recommendations could be succintly summarized as being "The Privatization of Indian Affairs" or maybe "The ANCSA of the Lower 48." I don't think there is any question that our reservations need economic stimulation and that decisions effecting the tribes should be made close to home and that there are times when execessive federal government regulations get in the way. This is not to say that we want the presence of the federal government eliminated from the Indian reservations and somehow replaced with private interests. I hope that we learned something from the disaster that was brought to our people by the Indian Allotment Act of 1887. There is now, and always will be, a need for the federal government to support the tribes and to carry out its trust responsibilities, not just over natural resources, but relative to the social, educational and health aspects of our peoples lives.

There are aspects of the Commissions recommendations that are very interesting and positive and may indeed help tribes to stimulate their reservation economies but it will be important for the BIA to fully and meaningfully consult with the tribes and the Congress, and receive the sanctions of those entities, prior to implementing, such policies. Central to such policies should be efforts to help tribes develop a permanent infrastructure within the tribal government and the establishment of a tax base to support the tribal government. As we have a somewhat unique and successful taxation system at Cherokee in North Carolina, we offer our help to the Swimmer Administration in dealing with this most central cog in the development of the reservations.

My Chairman, this concludes my testimony in support of Ross Swimmer for Assistant Secretary for Indian Affairs. I urge this Committee to expeditiously report his nomination to the Senate so that he can take over and give some direction to the BIA. I would be pleased to answer any questions you might have.

Senator ANDREWS. Thank you very much, Chief Youngdeer. Your statement is complete and we appreciate your taking the time to share it with us. Good to have you here.

Mr. YOUNGDEER. Thank you.

Senator ANDREWS. Our next witness is Richard LaFromboise, the president of the National Tribal Chairmen's Association in Washington. I don't see old "Jiggers" out there.

The SPEAKER. Mr. Chairman, could you call him again in about 15 or 20 minutes?

Senator ANDREWS. I certainly will. We understand he's coming in from North Dakota and we'll call him later on, after we have some other individuals testify. If he doesn't make it, we'll receive his presentation and include it as a part of the record.

The SPEAKER. Thank you, Mr. Chairman.

Senator ANDREWS. Suzanne Harjo, the executive director of the National Conference of American Indians, is next, and I understand she is not here either. Similarly, we will have her testimony later on or we will receive it.

The SPEAKER. She will be here later.

Senator ANDREWS. Pardon?

The SPEAKER. She will be here later.

Senator ANDREWS. Later? OK.

Next, Joy Sunbird, the California Intertribal Council, from Berkeley, CA. Is Joy here?

[No response.]

Senator ANDREWS. Next, LaDonna Harris, the president of Americans for Indian Opportunity. LaDonna, great to have you here. Good to see you again.

STATEMENT OF LaDONNA HARRIS, PRESIDENT, AMERICANS FOR INDIAN OPPORTUNITY

Mrs. HARRIS. Mr. Chairman, thank you for allowing me to appear today on something positive. It's hard to be positive in the Indian community right now, with budget cuts and——

Senator ANDREWS. You and I know it gets to be awfully difficult, doesn't it?

Mrs. HARRIS. Yes, indeed. So thank you for this, because we can be positive in regard to Ross Swimmer.

I want you to know, coming from the State of Oklahoma, I grew up being taught that on the eastern side of the State there were the Civilized Tribes. Then, there were the rest of us. So, it is a rare opportunity that the rest of us get the opportunity to testify in behalf of a civilized chairman. [Laughter.]

To make a point, though, about where we are in tribal government, I think that Ross Swimmer's appointment is appropriate at this time. He is chief of the Cherokees, and this is a time when the administration is talking about the government-to-government relationship. We are in a period of self-determination, and the question is: How do we institutionalize our tribal governments as part of the political fabric of this country? I think the timing of this appointment is very appropriate.

I have had a chance to know Ross for some years now, through Oklahoma, through my work in Oklahomans for Indian Opportunity, and see that eastern side of the State develop, particularly the Cherokee Nation. Then I have had a chance to observe him in a national leadership role with the Council of Energy Resource Tribes. I have seen him grow and I have become quite a fan of his, though he is of a different political persuasion, I have come to admire him a great deal in his efforts in all our behalfs in regard to economic development, and in tribal control of natural resources.

Flexibility, commitment to Indianess, and a view of the national issues are qualities needed by those in positions of national prominence, such as Assistant Secretary for Indian Affairs. Ross Swimmer has those qualities.

He is going to need your help and support as well as that of the rest of us to make this job work. I think that with his leadership we might be able to see some real changes.

I just want to say thank you again for allowing me to have this opportunity to speak in behalf of Chief Swimmer.

Senator ANDREWS. Thank you very much, LaDonna. We are always privileged to have you share your views with this committee. I appreciate your coming today.

Our next witness is Jesse Short, Yurok Community, Yurok Reservation, CA. Jesse didn't make it either.

Finally, Wilfred Colegrove, the chairman of the Hoopa Valley Business Council of Hoopa, CA, accompanied by Daniel Jordan, a council member.

Let me say that I am past due at an agriculture appropriations floor fight that I have an amendment before, so with your permission I will have our chief of staff conduct any questions with you, and that will save the time instead of having to come back later on. We appreciate your appearance.

STATEMENT OF WILFRED K. COLEGROVE, CHAIRMAN, HOOPA VALLEY BUSINESS COUNCIL, HOOPA, CA, ACCOMPANIED BY DAN JORDAN, COUNCILMAN; AND MS. FRAN ARERS, TRIBAL ATTORNEY

Mr. COLEGROVE. Good morning, Mr. Chairman. My name is Wilfred Colegrove, and I am chairman of the Hoopa Valley Business Council. I am accompanied by Daniel Jordan, a councilman, and Fran Arers, who is the tribal attorney. I have submitted the written testimony for the record and now, with your permission, I would just like to make a few important points.

Mr. TAYLOR. Your prepared statement will be made a part of the record.

Mr. COLEGROVE. Thank you. We welcome the opportunity to present our opinion regarding the U.S. Senate confirmation of Mr. Ross Swimmer for appointment as Assistant Secretary of the Interior for Indian Affairs. Effective leadership in this position is essential for the continued development of trust relationships between the Indian tribal governments and the U.S. Government.

The Hoopa Reservation is located in the northwest coast of California. In California we have a long history of involvement with foreign governments seeking the riches of our territories. We have resisted the Russian fur merchants, the Spanish conquistadores, the Mexican occupation, the international gold seekers, and today's expansion of California's population explosion which requires additional Indian land and water.

The California tribes have experienced many adversities but continue to survive. We now face a legal decision, the broad interpretation of which could result in total anarchy. After Mexico ceded California to the United States via the Guadalupe-Hidalgo Treaty in 1848, the Government developed an Indian policy for California which resulted in the Congress passing legislation, which was the act of April 8, 1864, that authorized the executive branch to establish four Indian reservations in California, which included the Hoopa, the Round Valley, the Tule River, and the Mission Reservations.

On these four Indian reservations a natural political evolution followed which developed into formalized governmental processes which are presently intact. Many of these political entities were formalized from the traditional governments which had roots for over thousands of years, and the Hoopa is one of those governments.

Today there is a threat to these tribal governmental entities that must not be lightly regarded. Constitutionally, the U.S. Congress is charged with enacting laws to govern this country. However, the U.S. courts also make laws by rendering decisions in lawsuits which may not reflect the intent of congressional enactments. We sincerely believe that this type of law is being made in a U.S. district court case that is presently being litigated. This law will affect all tribes in California whose reservations were established pursuant to the 1864 act.

In this case, known as the *Puzz* v. *United States*, the plaintiffs contend that another case in the Court of Claims, which is *Jesse Short* v. *United States* and the Hoopa Tribe, found that the U.S. Congressional Act of 1864 only establishes individual rights—and I will repeat that—only establishes individual rights on the Hoopa Reservation. Therefore, they contend that the Hoopa Valley tribal government is illegal and should be dissolved.

It follows that if the Hoopa tribal government is deemed to be illegal, then the other reservations established under the act of 1864 also are illegal. This type of activity can only lead to total confusion in the governmental activities of the California Indian tribal governments. The Hoopas today are experiencing this type of disruption.

In addition, a 1983 ruling in the *Short* case held that "tribes" in the Federal timber statutes authorizing distribution of tribal timber proceeds means, and I will quote, "general Indian groups communally concerned with the proceeds—not an officially organized or recognized Indian tribe." Mr. Chairman, this affects all tribal organizations that have timber in the United States.

The *Jesse Short* lawsuit, begun by administrative decisions in 1956 and in the courts in 1963, is one of the oldest lawsuits in the U.S. court history and does not appear to be at any early resolution. The concern that we have before this committee is that the appointee be aware of the magnitude of the problem as presented by the Hoopa Tribe. It may have ramifications not only for California but other reservations located throughout the United States.

It is clear that only a legislative solution can resolve this longstanding problem, and we are requesting that this become a priority within the Interior Department. My written testimony addresses in detail why settlement of the ongoing litigation cannot resolve this problem. We are requesting that introduction and passage of legislation become a priority with the Congress and the Interior Department.

Furthermore, California Indian reservations, as a result of some of the adversities stated above, have not shared in an equitable share of the Bureau of Indian Affairs budgets. We request this inequity be examined and resolved.

Finally, beyond the consideration of these two major California issues, the Hoopa Tribe has carefully examined the public service of Mr. Swimmer, both to his tribe and to other endeavors, and we have concluded that he is an excellent candidate for the position and request that he be confirmed as Assistant Secretary for Indian Affairs.

Thank you, Mr. Chairman. I will be happy to answer any questions that you may have.

[Mr. Colegrove's prepared statement, on behalf of the Hoopa Tribe, follows:]

TESTIMONY OF WILFRED K. COLEGROVE, CHAIRMAN
HOOPA VALLEY BUSINESS COUNCIL
BEFORE THE SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS

October 16, 1985

Good afternoon, Mr. Chairman and members of the Committee. I am Wilfred Colegrove, Chairman of the Hoopa Valley Business Council, the officially elected governing body of the Hoopa Valley Tribe in California. The Hoopa Tribe appreciates the opportunity to speak before you today.

Overview

Since our country's inception, there always has existed a unique political relationship between the United States and American Indian tribes. This special relationship is provided for in the Constitution and has been consistently upheld over the past 200 years by numerous laws, treaties, and court decisions.

As a result, Indian affairs always have been handled by the United States on a government-to-government basis. Individual Indian tribes are officially recognized as governmental entities and receive, among other benefits, direct federal funding in the form of block grants.

On January 24, 1983, the President issued a statement on Indian Policy in which he reaffirmed his Administration's commitment to tribal self-determination. Dealings on a government-to-government basis were to be strengthened in order to allow individual Indian tribes to assume more responsibility for control over their own economic and political affairs.

The President's policy statement acknowledged that Indian tribes, like states, have the primary responsibility for delivering services to their people. The statement stressed the importance of tribes' reducing their dependence on federal funds by providing a greater percentage of the cost of their self-government and the President pledged to remove the federal impediments to tribal self-government and tribal resource development. With regard to natural resources such as timber, fish and minerals, the President acknowledged that tribal governments, not the Federal Government, have the responsibility to determine the extent and the methods of developing the tribes' natural resources.

The President's policy statement is an important affirmation of the status of tribes as governments with responsibilities similar to those of states. However, as tribal governments assume greater governmental responsibilities and develop their economies they must be able to govern effectively. Judicial and administrative challenges to the tribes' very existence as well as to their authority to tax, to regulate and manage the development of natural resources, to regulate the transaction of business, to enforce tribal laws, and to carry on proprietary activities separate and distinct from governmental activities can be expected and are already occurring.

For example, a protracted lawsuit, Short v. United States, 202 Ct. Cl. 870 (1973), threatens to undercut this Administration's policy objective of creating a stronger tribal government structure and reservation economy. The uncertain and broadly interpreted holding of the case has prompted much speculation among tribal leaders across the nation concerning the future of the organized tribe as a governing entity on Indian reservations.

The Hoopa Valley Indian Reservation is being forced to undergo economic and governmental deterioration due to the impact of Short. The case is now over 20 years old and, like Jarndyce v. Jarndyce of Dickens' Bleakhouse, promises to be interminable. To prevent yet more harmful litigation, help resolve related reservation management issues, and foster the Administration's policy of strengthening tribal self-government and promoting reservation economic development, the Hoopa Valley Tribe is seeking introduction of legislation. The Tribe wishes to begin the legislative process without further delay. Only under the auspices of Congress can progress be achieved toward resolution, not of the Short litigation itself, but of the serious problems arising from the litigation.

Legal and Administrative Background

The Reservation currently includes two groups which historically have been separate geographically, culturally and politically: The Hoopa Tribe inhabits its aboriginal territory, now known as the Square portion of the Hoopa Valley Reservation, in the mountains 60 miles inland from Eureka. See map attached. There is an extant Yurok Tribe, but it purposely has no defined membership or government. Some individuals of Indian descent, often loosely referred to as Yuroks, live in aboriginal Yurok territory, including the area known as the Extension portion of the Reservation, which follows the

Klamath River from the Square to the Ocean. In 1891, a Presidential Executive Order merged the Square and the Extension into what is now considered the Hoopa Valley Reservation. At that time there was a congressionally imposed quota on the number of Indian reservations in California, and the President merged two reservations to reduce the number. This is the underpinning of today's problem and can be corrected only legislatively.

The two groups have continued to function separately in every way. The Indians on the Extension sold all their timber beginning in the 1890's and most abandoned tribal relations thereafter. When the Hoopas began to sell their timber on the Square in the 1950's, the Interior Department approved distribution of the proceeds solely to the Hoopa Tribe and its members.

The Short case was filed in 1963 by individuals of Indian descent, living in 36 states and territories from Switzerland to Guam, seeking to share timber revenue from the Hoopa Square for their own personal use. Throughout years of proceedings the Court of Claims has rejected the Interior Department's right to use timber revenue from the Square solely for tribal members. The court has relied on the 1891 Executive Order. In 1973, the court ruled that qualified plaintiffs were entitled to recover damages from the United States. After twenty two years the court has ruled that 60% of the plaintiffs are qualified. The court has yet to rule on the remaining 40% and on the quantum of damages.

As the litigation is presently framed, Short essentially involves an interpretation of the general federal Indian timber harvest statute (25 U.S.C. § 407). Under that statute, timber resources on tribal land of all reservations may be sold by the Federal Government and the proceeds used for the benefit of Indians "who are members of the tribe or tribes concerned." Congress intended, and the Interior Department has interpreted this statute, to require distribution of timber proceeds to the federally-recognized tribal government of a reservation and its enrolled members. In an unprecedented decision the court interpreted the word "tribe" to mean "general Indian groups communally concerned with the proceeds--not an officially organized or recognized Indian tribe."

Despite intensive legal proceedings since 1973, the matter is not resolved and will continue for years absent legislation. Directly resulting from Short is Puzz v. United States Department of the Interior, et al., in which a few non-tribal individuals seek to dissolve the Hoopa Tribe and force the United States to cease government-to-government relations with it. Thus, Short, begun as a simple suit only for a money judgment, has now engendered a general attack on the existence of the Hoopa Tribe, its federal recognition, and its ability to govern the Reservation.

Because of uncertainty about what federal conduct might be wrongful in light of the Short decision and the lack of an organized government on the Extension, the Bureau of Indian Affairs has assumed the role of surrogate government to manage the resources and govern the people of the Reservation. For these same reasons the Bureau has since 1974 sequestered timber revenue from the Square, holding the majority (approximately 53 million dollars) in an escrow account which they will not release for the benefit of the Reservation.

Request for Legislative Remedy

The Hoopa Tribe seeks legislation which will, when finally enacted, divide the present Reservation and restore it to its historic status, one reservation for the Hoopa Tribe (the Square) and one for the Indians along the Klamath River (the Extension). They have asked that the bill clarify the definition of "tribe" in 25 U.S.C. § 407 to mean "enrolled members of a federally recognized tribe or tribes on a reservation."

Appropriateness of Legislation

Passage of legislation would accomplish the following objectives:

1. Strengthen the Hoopa Tribal Government and enable the Hoopa Tribe to govern its own resources and members.

2. Encourage the 14% of plaintiffs who live on the Extension to organize a Yurok government with defined membership to make responsible governmental decisions for their own reservation. Organization efforts have been thwarted by the 86% of the plaintiffs spread across the world, many of whom expect that they will be excluded from the tribe once organized. Dividing the Reservation and clarifying § 407 would remove the basis for future litigation by those plaintiffs and leave no incentive for opposing organization efforts.

3. Prevent costly Short type cases in the future. The Tribe estimates the cost of litigating the case by the United States, the plaintiffs and the Tribe to be in excess of $10 million. At least 34 federal employees have spent significant amounts of time on the case and related issues for more than 20 years. At least 13 additional lawsuits have been filed as a result of management uncertainties generated by Short. Until Congress acts litigation will remain a permanent state of affairs.

4. If the legislation were to authorize Interior to release the escrow fund, approximately $53 million would flow into the economy of Northern California.

5. Amending § 407 would prevent erosion of the governments and financial stability of the approximately 100 timber tribes in the United States, thereby increasing the possibility for tribes through tribal government to reduce their dependence on federal benefits and move closer to the goal of self-sufficiency. Such an amendment would support the President's January 24, 1983 Indian Policy Statement. It would be consistent with established federal law that the political relationship between the United States and Indian tribes, not race, is the basis for Indian entitlements.

6. In an area of unemployment which exceeds 80%, because the timber industry has become practically nonexistent in part due to the uncertainties of the Short case, people could once again go to work.

The authority of the Hoopa Tribe to manage the timber resources on the Square would be clear.

7. Removing the uncertainty of who has governmental authority on the Reservation would enable the Hoopa Tribe and the Yurok Tribe once organized to enact laws levying taxes, regulating land use, and managing the forests and fisheries, as do other tribal governments throughout the United States.

8. Support for a legislative solution has been expressed by the Bureau of Indian Affairs, the Lands & Natural Resources Division of the Justice Department, the National Congress of American Indians, the National Tribal Chairmen's Association, and other timber tribes. The California Attorney General's Office will support a legislative solution to this California Indian problem. Support has also been expressed by the American Sportsfishing Alliance.

The following issues concerning a legislative solution have been raised:

1. Would legislatively dividing the Reservation constitute a Fifth Amendment "taking" of property? The Tribe's counsel has prepared a legal opinion that congressional action would not constitute a taking, but rather the appropriate exercise by Congress of its unique obligation toward the Indians. If it should be construed as a taking, fair compensation in the bill would make it constitutional.

Release of some of the existing escrow funds could provide that compensation without requiring a federal appropriation. Assurance on the taking question could be provided by the Justice Department when a bill is considered in committee.

2. Even though the Short Court cannot render a general, declaratory judgment, and legislation dividing the Reservation is constitutional, does the 1973 ruling mean that the plaintiffs have some underlying right to Hoopa tribal membership and Reservation resources which such legislation would affect? In 1973 the former Court of Claims ruled that when the Secretary of the Interior decided to distribute cash grants from Reservation income it is arbitrary for him to discriminate between Indians who are enrolled tribal members and persons who have the same connections with the Reservation but have not been enrolled in the Tribe. The 1973 ruling concerned 22 people who had been born on the Reservation, had lived on the Reservation all or most of their life and who were 1/2 Indian blood or more. The Court apparently viewed the Reservation per capita payments as somewhat like a federal welfare program.

When the Court of Claims attempted to apply the 1973 ruling to the 3,800 other plaintiffs in the Short case it found it very difficult. Finally, the Court has adopted qualification standards for the plaintiffs similar to the Hoopa tribal membership standards that were used in making the per capita payments. Thus, the 1973 ruling means that per capita payments, if they are to be made at all, must be made equally to enrolled tribal members and to other similarly-situated Indians. It does not mean that the plaintiffs are members of the Hoopa Tribe or that they have any underlying right to the Reservation resources. The October 6, 1983 ruling of the Court of Appeals for the Federal District stressed that "[t]his is solely a suit against the United States for monies, and everything we decide is in that connection alone; neither the Claims Court nor this court is issuing a general declaratory judgment. We are not deciding standards for membership in any tribe, band, or Indian group, ..."

3. Would non-Indian fishing rights be affected? A proviso could be inserted in the bill making it clear that neither non-Indian rights nor tribal rights are to be affected by the legislation, i.e., not increased, decreased or changed in any way.

4. If the bill were not to include specific fishery management proposals, would there be any effect on management of the Klamath River fishery? Clarifying the authority of the Hoopa Tribe and facilitating the organization of the Yurok Tribe would replace federal management with tribal governments close to the people and able to manage the resource and cooperate with state and federal governments in those endeavors. It would also curtail exploitation of the resource by litigants most of whom live more than 50 miles from the Reservation, i.e., in Oregon, the Sacramento Valley, Los Angeles and other states. The organized Yurok Tribe would with certainty restrict fishing by distant litigants with few ties to the Reservation.

5. Would dividing the Reservation be unfair to the "Yuroks"? The problems created by the joinder of the Square and Extension boundaries can best be corrected by such a division. The history of forced tribal consolidations, e.g., Navajo-Hopi and Shoshone-Arapaho, has shown that even two well-organized dissimilar tribes have difficulty effectively co-managing an extensive reservation and this is made more acute here where there is one tribe plus a scattered group of unorganized individuals. Legislation would provide a reservation solely for the "Yuroks" on which they can build a governmental and economic base for themselves. This base offers a more secure source of tribal funds than would endless litigation. More than twenty years of litigation has not untangled the web. Years of litigation are ahead if Congress does not act. In addition to the benefits of the legislation, plaintiffs will still recover dollar damages from the United States in the Short litigation, and that fact should be considered in evaluating the equity of the proposed bill.

6. Is this a tribe versus tribe issue in which Congress should not interfere? This involves one tribe versus individuals, many of minute amounts of Indian blood and with few or no ties to the Reservation, seeking money for their own personal use. The extant Yurok Tribe has been prevented from organizing by those individuals who fear that the defined tribal membership would exclude them. Dividing the Reservation and removing the profit incentive for future litigation would allow the genuine Indian residents on and near the Reservation to organize and form the membership of the Yurok Tribe.

7. Is legislation necessary? Will the conclusion of the Short case resolve the problem? It is necessary; the litigation is only for past damages against the United States and not for a declaration of the rights in the Reservation and authority over it. The Claims Court is without jurisdiction to resolve the underlying reservation management questions. The plaintiffs can be expected to go forward with additional litigation and every management decision will engender controversy. By contrast, with enactment of legislation the Short case will proceed to its own conclusion, but a clarification of the ground rules would remove the incentive to file new litigation.

8. Can a solution to the reservation management problems be negotiated, or voluntarily agreed upon, by the Hoopa Tribe and the Short plaintiffs without or prior to legislation? It is specifically because agreement cannot be reached among the 3,800 plaintiffs on any issue that legislation is a necessity. Only the knowledge that legislation is being proposed by the Hoopa Tribe and considered by the Interior Department and the Congress has kindled a flicker of interest in negotiating a resolution of the Reservation's problems. Unfortunately, although a few individuals may reach agreement among themselves, they are simply not authorized to speak for the other thousands of plaintiffs and therefore cannot actually make a binding agreement. And although a few individuals may genuinely wish to agree upon a solution, and the Tribe welcomes their willingness to discuss solutions, years of experience has demonstrated that they are not able to stand firm in their commitments because other forceful

and less-well-meaning persons badger them into recanting. Although total agreement may not be reachable, a legislative forum will at least allow some individuals to make firm commitments and will provide a strong incentive for negotiations among plaintiffs prior to presentation of testimony. From that testimony, even though it may vary from witness to witness, congressional members can discern the precise form legislation should take. Only legislation can provide a legally enforceable remedy. Only legislation can divide the Reservation or clarify the defintion of tribe in 25 U.S.C. § 407, both of which are basic requirements for resolving the Reservation management problems.

Congressional and Interior Action Needed

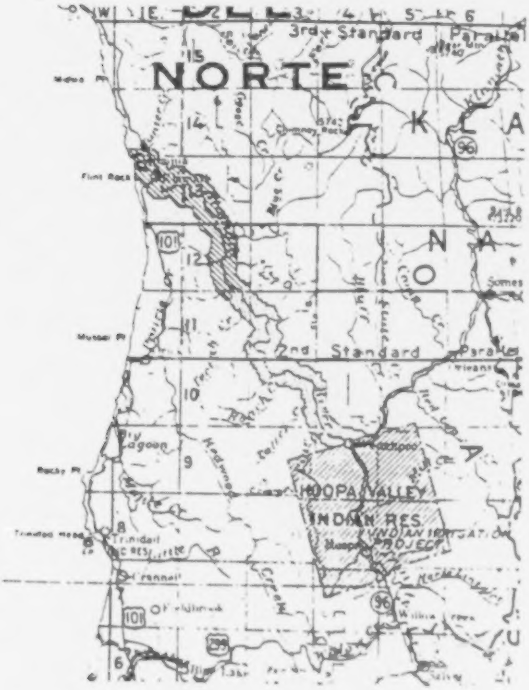
The Hoopa Tribe wishes to bring the need for legislation formally to the attention of this Committee and the nominee for Assistant Secretary for Indian Affairs. It is not enough for all concerned to acknowledge that there are management problems on the Hoopa Reservation, that all tribes are potentially affected, or even that legislation is needed. That has been the state of affairs for a long time now. What is needed now is for the Congress and the Interior Department to make enactment of legislation a priority and to act accordingly.

While we respect expressions of intent by some plaintiffs to negotiate, the fact remains that agreement among plaintiffs is just not possible, and that only the legislative process can provide the mechanism for identifying the views of some plaintiffs about how the

Reservation should be managed, allowing those views to remain firm as a part of the congressional record, and providing a basis for the members to decide upon the content of the final bill. The affected parties should not presume to negotiate a final bill prior to its introduction. It must be remembered that introduction of a bill merely begins the legislative process. After that, all the parties concerned can express their views to the Congress as to what a final bill should contain.

In conclusion, the Hoopa Tribe believes that Mr. Ross Swimmer has the ability to provide the leadership to the Bureau of Indian Affairs necessary to adequately address these critical issues in California.

MAP OF HOOPA VALLEY INDIAN RESERVATION, CALIFORNIA*
Scale: 1 inch = 12 miles



LEGEND: ▨ Old Klamath River Reservation
▤ Connecting Strip
▨ Original Hoopa Valley Reservation

*United States Department of Interior, General Land Office, 1944.

Mr. TAYLOR. Thank you, Mr. Colegrove.

I would just reflect back a few years when I think you and I both served on the American Indian Policy Review Commission and, as I recall, in chapter 13 of that final report there was a very well-detailed and documented part on the California problem, and I believe that you were the author of that.

Mr. COLEGROVE. Thank you.

Mr. TAYLOR. So perhaps we can refer back to that as we consider the problem you have raised.

Mr. Jordan, do you have any comments you would like to add?

Mr. JORDAN. No.

Mr. TAYLOR. Ms. Arers.

Ms. ARERS. Thank you. I would like to say that this problem on the Hoopa Reservation has stymied the tribal government of the Hoopa Tribe and has made it impossible for them to manage their resources. It has also stymied the Bureau of Indian Affairs. They have had to step in, because of the court ruling that an undefined group of individuals has some undefined right against the United States—there has been no ruling that they have any right in the reservation—but because of the ruling that they are entitled to damages against the United States for its actions in dealing only with the Hoopa tribal government where administration of timber is concerned, the Bureau of Indian Affairs feels that it must step in as a surrogate government and govern the reservation. It, therefore, presumes to manage the timber and the fishery resources and precludes the normal daily governing by the Hoopa Tribe.

Now the Bureau is not really happy with this problem. They have had to do this for more than 20 years, and our estimates are that their doing so and the litigation of these cases cost in excess of $10 million. Everybody in the Bureau of Indian Affairs—and I know that is a rather all-inclusive statement but I think it's fair—agrees that something needs to be done about this problem, and that it can only be resolved through legislation; so, what we are urging is that Mr. Ross Swimmer demonstrate leadership in coalescing this combined sense that legislation is needed into some definite and positive action.

Mr. TAYLOR. It's my understanding that the position of the Hoopa Tribe is that some legislation activity would really be a precursor into entering into negotiations with the Yurok community, looking toward an agreed-upon settlement by all of the parties. Is that correct?

Mr. COLEGROVE. Yes; it is correct. We believe that, I think, Congress is the most logical forum, would be the best and most logical forum that we could utilize at this point.

Mr. TAYLOR. I don't have any more questions for this panel. Senator Abdnor.

[No response.]

Thank you very much for your testimony.

Mr. COLEGROVE. Thank you.

Mr. TAYLOR. We had three witnesses we have called on, or four, two of which are going to be late and two of which we don't know whether they will show up. I am going to suggest——

Senator ABDNOR. Before you do——

Mr. TAYLOR. Pardon me.

Senator **Abdnor** [continuing]. I'm sorry—I just wanted to say if I can that I am extremely sorry I was so late getting here, but some of us are just coming back. I certainly want to say that I have had an opportunity to visit with Mr. Ross Swimmer in my office for quite some time and I was very, very impressed with the gentleman. As you know, for a long time I have always had a great concern for education, education on our reservations, and I was extremely pleased with my conversation with him. It is a big part of the BIA, takes up a large part of the budget, and I feel confident that he is going to do a fine, fine job.

Mr. **Taylor**. Thank you, Senator Abdnor.

I was going to suggest a 5-minute recess to see whether either Suzanne Harjo or Richard LaFromboise can make it. If they are unable to, then we will allow them to submit their statements for the record, but at this point we'll take a 5-minute break.

[Recess taken.]

Mr. **Taylor**. The committee will come back to order.

I have checked with people in the audience. I am convinced that at least two of our witnesses from California will not make it in time. Suzan Shown Harjo of the National Congress of American Indians is delayed and Richard LaFromboise of NTCA is also delayed, so in light of that event, we will conclude and adjourn the hearings at this time, and the record will stay open for a period of 7 days to receive any additional testimony.

[Whereupon, at 11:55 a.m., the committee recessed, to reconvene at the call of the Chair.]

APPENDIXES

Appendix A--Materials pertinent in the confirmation of Ross O. Swimmer to be the Assistant Secretary of the Interior for Indian Affairs

Appendix B--Statement of Suzan Shown Harjo, executive director, National Congress of American Indians

Appendix A

[illegible] OCT -3 [illegible] 3:58

ROSS O. SWIMMER

Date of Birth: October 26, 1943

Marital Status: Married

Children: Two

Address: 714 Brentwood
P. O. Box 393
Tahlequah, OK 74464

Telephone: 918/456-2061 (Residence)
918/456-0501 (Business)
918/456-0671 (Business)

Education

University of Oklahoma, School of Law, Norman, Oklahoma; 1965-67, Degree - Juris Doctor, June 1967

University of Oklahoma, Norman, Oklahoma, 1961-65; Degree - Bachelor of Arts, June 1965; Major - Political Science

Work Experience

President, First National Bank, Tahlequah, Oklahoma, 1975-Present.

Principal Chief, Cherokee Nation of Oklahoma, August 1975 to Present.

Executive Vice President, First National Bank, Tahlequah, Oklahoma, 1974-75.

General Counsel, Cherokee Nation of Oklahoma, 1972-75.

Partner with Hanson, Peterson & Thompkins Law Firm, Oklahoma City, Oklahoma, 1967-1972. Areas of work included real property, probate and corporate.

Current Activities and Affiliations

President, Cherokee National Historical Society
Member, Cherokee Foundation
Member, Cherokee County, Oklahoma, and American Bar Associations
Member, Tahlequah Chamber of Commerce
Member, Tahlequah Area Arts & Humanities Council
Member, Oklahoma Historical Society
Chairman, Tahlequah Planning and Zoning Commission
Vestry, St. Basil's Episcopal Church
Member, State Committee on Indian Work, Episcopal Church

Current Activities and Affiliations

Secretary-Treasurer, Eastern Oklahoma Indian Health Advisory Board
Director, Board of Trustees, Oaks Indian Mission
Chairman, New Horizons, Fund Raising Committee for the Oaks Mission
Director, Board of Trustees, Five Civilized Tribes Foundation, Inc.
Director, Inter-tribal Council of the Five Civilized Tribes
Member, Industrial Development Commission, State of Oklahoma (Governor Appointment)
Board of Trustees, Oklahoma Health Sciences Foundation
Member, Oklahoma Bankers Association
Member, Board of Trustees, Northeastern State University Educational Foundation
Member, Executive Committee, Boy Scouts of America, Eastern Oklahoma Council
Member, Board of Directors, Council of Energy Resource Tribes

ROSS SWIMMER

If one man is responsible for the resurrection of the Cherokee Nation that man is Ross Swimmer, the tribe's Principal Chief.

Elected to his fourth term in office in 1983, Swimmer is one-quarter Cherokee. His father, a practicing attorney, grew up on the Cherokee reservation in Oklahoma and his mother is from Oklahoma City. Swimmer admits to not knowing much about the traditions of the Cherokees while growing up. But, he notes that, at the time, all tribes in the state were fragmented due to government policy.

He attended local public schools in the Oklahoma City area and obtained his Bachelor of Arts and Law Degree from the University of Oklahoma. He was involved in various boards and committees while in school, belonged to a legal fraternity, worked on the year book committee, and was a member of the school's honor society.

ROSS SWIMMER

In 1975, about ten years after graduating from law school, attorney Swimmer was hired by the Cherokee Nation to provide legal advice. It was at this time that he became acquainted with the traditions and the needs of the tribe. He noticed that the Nation had no real semblance of government. It had assets of only $2.5 million to $3 million, was in debt, and had a major unemployment problem.

He ran for the position of principal chief of the Cherokee Nation and was elected in the early 1970s. Since 1975 Swimmer has worked hard to re-build the infrastructure of tribal government. With his urging a new post of deputy chief was established as well as a three-judge court which settles tribal disputes. He assisted in the development of a 15 member council to aid in the formation of tribal policies.

He lobbied hard with the federal government for funds to better the tribes educational and medical woes and as a result 12 Head Start centers providing education to 365 kids now exist. In addition, there are now two rural health clinics on the reservation administering medical assistance to more than 15,000 patients a year. These medical facilities hire their own staff and Swimmer is proud to note that per visit costs are below Indian Health Services' rates. He also points out that the clinics are privately run.

To help encourage interest in tribal traditions, Swimmer helped institute a summer youth cultural series in which the medicine men teach kids about tribal folklore as well as the medicinal advantages of herbs.

He is now working hard attempting to recruit businesses to the reservation which will provide more jobs for his people.

Today the tribe can boast that its assets are $34 million, that 600 of its people are employed, that it receives a direct income of $24 million a year, that services are being provided to thousands of its citizens, and that Cherokee businesses are 90 percent employed by Cherokee tribal members.

A modest man, Swimmer attributes his success to being at the right place at the right time. He noted that his tenure as Principal Chief parallels the years the federal government increased its assistance programs.

He has also served as President of the First National Bank of Tahlequah, Oklahoma, and is currently Vice Chairman of the Council of Energy Resource Tribes (CERT), an organization formed about ten years ago which provides technical information to energy producing tribes throughout the United States.

MARK ANDREWS, NORTH DAKOTA, CHAIRMAN

BARRY GOLDWATER, ARIZONA
SLADE GORTON, WASHINGTON
FRANK H. MURKOWSKI, ALASKA
JAMES ABDNOR, SOUTH DAKOTA

JOHN MELCHER, MONTANA
DANIEL K. INOUYE, HAWAII
DENNIS DECONCINI, ARIZONA
QUENTIN N. BURDICK, NORTH DAKOTA

PETER S. TAYLOR, STAFF DIRECTOR
MAX I. RICHTMAN, MINORITY STAFF DIRECTOR

United States Senate
SELECT COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC 20510

October 15, 1985

MEMORANDUM

To: Senator Mark Andrews, Chairman
and Committee Members

From: Peter Taylor, Staff Director PST

Subj: Confirmation hearing on Ross Swimmer
Nominee for Assistant Secretary for Indian Affairs

The nomination of Ross Swimmer to be Assistant Secretary for Indian Affairs at the Department of the Interior was received in the Senate and referred to the Select Committee on Indian Affairs on September 30, 1985. After the resignation of Kenneth Smith in December of 1984, this vital position was filled by the Deputy Assistant Secretary, John Fritz, who served in an acting capacity until early September when he resigned.

The Assistant Secretary for Indian Affairs is the chief administrative officer of the Bureau of Indian Affairs, an agency which employs approximately 12,000 permanent employees and has a budget of slightly less than $1 billion, not including appropriated tribal funds which accounts for an additional $500 million.

PERSONAL BACKGROUND

Mr. Swimmer is 41 years of age. He is married, has two children, and currently resides in Talequah, Oklahoma. He is currently President of the First National Bank of Talequah and also serves as Principal Chief of the Cherokee Nation of Oklahoma, a tribe with approximately 45,000 members. He has held both of these positions since 1975. From 1972 to 1975 he served as General Counsel to the Cherokee Nation and prior to that was a partner in the law firm of Hanson, Peterson and Thompkins Law Offices in Oklahoma City. Mr. Swimmer is a member or officer of numerous civic or charitable organizations and serves as Director of the Board of Trustees of the Five Civilized Tribes Foundation and the Inter-tribal Council of the Five Civilized Tribes. He is also a member of the Board of Directors of the Council of Energy Resource Tribes.

FUNCTION OF THE BUREAU OF INDIAN AFFAIRS

The responsibilities of the BIA are extremely broad, covering provision of most services normally proveded by state and local governments, except health care which is provided by the Indian Health Service at HHS and new housing which is provided by HUD. BIA has the additional responsibility of administering the trust responsibility of the United States toward lands and natural resources owned by the tribes or held by the United States for individual Indians.

Education programs account for over 25% of the BIA budget, and over 10% of the BIA budget is devoted to provision of social services such as general assistance and child welfare programs. In addition to these two major program activities, the BIA provides directly or assists tribes in law enforcement and operation of courts, economic development and employment assistance programs, road building and maintenance, development of resources ranging from timber to farming (both irrigated and dry) and grazing, utilization of water resources, and mining and mineral activity including coal and oil leasing, and maintenance and enhancement of tribal fishing resources. In all, the Bureau, in conjunction with the tribes, is responsible for the management of approximately 50 million acres of land in the lower 48 states and has additional responsibilities with respect to approximately 40 million acres of land set aside for Alaskan Natives under the Alaskan Native Claims Settlement Act.

There are approximately 300 Indian tribes in the lower 48 states, and an additional count of approximately 75 Native villages in Alaska. The BIA carries out its responsibilities to these tribes and villages on the basis of a government-to-government relationship. Since 1975 a major thrust of Indian policy has been to encourage tribes to assume responsibility for program adminstration through the aegis of contracting with the Federal government under the Indian Self-Determination and Education Assistance Act (P.L. 93-638). At this time approximately 30% of the budgeted funds of the BIA are administered by tribes under "638" contracts. The capacity of tribes and of the BIA to increase this figure is limited by (1) the fact that many tribes (approximately 85%) are small and thus have limited human resources and infrastructure, and (2) that many functions involving the trust responsibility may not be contractible.

United States of America
**Office of
Government Ethics**

Office of Personnel Management
Washington, D.C. 20415

OCT - 4 1985

Honorable Mark Andrews
Chairman, Select Committee on
Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Ross O. Swimmer, who has been nominated by President Reagan for the position of Assistant Secretary - Indian Affairs, Department of the Interior.

We have reviewed the report and have also obtained advice from the Department of the Interior concerning any possible conflict in light of the Department's functions and the nominee's proposed duties. I enclose a copy of the Department's letter of October 2, 1985, which outlines its analysis of Mr. Swimmer's financial disclosure report. Based on the foregoing information, we believe that Mr. Swimmer is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

David H. Martin
Director

Enclosure

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

October 2, 1985

Mr. David H. Martin
Director, Office of Government Ethics
Office of Personnel Management
P.O. Box 14108
Washington, D.C. 20044

Dear Mr. Martin:

The enclosed financial disclosure report filed by Mr. Ross O. Swimmer for the position of Assistant Secretary - Indian Affairs, U.S. Department of the Interior has been reviewed in compliance with 5 CFR §734.604(a). In addition to the standard conflict of interest prohibitions in 18 U.S.C. §§201-209, the Assistant Secretary - Indian Affairs is also subject to several prohibitions that apply only to employees in our Department. These additional prohibitions are 18 U.S.C. §437; 30 U.S.C. §6; 30 U.S.C. §1211(f); 43 U.S.C. §11 and 43 U.S.C. §31(a). Except for 18 U.S.C. §437 and 30 U.S.C. §1211(f) the provisions of each of these statutes is extended to the Assistant Secretary - Indian Affairs by Department regulations in 43 CFR Part 20. The provisions of 18 U.S.C. §437 and 30 U.S.C. §1211(f) apply directly to the Assistant Secretary - Indian Affairs.

In addition to the information provided on the SF-278 and on the enclosure to this letter, my certification is based on the following analyses and planned resolutions:

1. Paragraphs (a) and (a)(2) of 18 U.S.C. §437 state in part:

> "... whoever, being an officer, employee, or agent of the Bureau of Indian Affairs ... has (other than as a lawful representative of the United States) any interest, in such officer, employee, or agent's name, or in the name of another person where such officer, employee, or agent benefits or appears to benefit from such interests —
>
> ...(2) in any purchase or sale of any service or real or personal property (or any interest therein) from or to any Indian, or
>
> colludes with any person attempting to obtain any such ... ... purchase or sale, shall be fined not more than $5,000 or imprisoned not more than six months or both, and shall be removed from office, notwithstanding any provision of law concerning termination from Federal employment.

Paragraph 18 U.S.C. §437(b)(1) provides authority for rules and regulations to implement the provisions of 18 U.S.C. §437(a). However, 18 U.S.C. §437(b)(2) states:

> "No rule or regulation prescribed pursuant to paragraph (1) of this subsection shall permit any officer, employee, or agent referred to in that paragraph —
>
> (a) to make any purchase from or sale to an Indian of any real or personal property (or any interest therein) for the purpose of commercially selling, reselling, trading, or bartering such property;..."

In response to questions of potential conflict between Mr. Swimmer's business interests and the provisions of 18 U.S.C. §437 Mr. Swimmer states that: "Nearly all of the investments listed under business dealings are in the nature of tax shelters and for long-term equity growth. None are managed by me and none are engaged in commercial trading with Indians. It is possible that a person of Indian descent could be a tenant in an apartment in which I have part ownership, but such a situation would be happenstance. Indian tenants are not recruited in any of the projects, one of which is in the Houston, Texas area."

Based on this information and on my review of the implementing regulations in 25 CFR Part 140 I have determined that Mr. Swimmer's reported interests are in compliance with 18 U.S.C. §437. The regulations limit trading with any member of an Indian Tribe who is residing on a Federal Indian Reservation, on land held in trust by the United States for Indians or on land subject to a restriction against alienation imposed by the United States. Since Mr. Swimmer's business interests are not located on such lands the chance for violation of this provision to occur are extremely remote. Further, if a questionable situation should arise under this law, the regulations provide criteria for consideration and approval by the Secretary on a case-by-case basis.

2. Mrs. Swimmer's reported employment with Turner Brothers Coal Company was of concern under 30 U.S.C. §1211(f). However, Mr. Swimmer has informed us that his wife's employment with Turner Brothers Coal Company ended on September 1, 1984 when she became associated with the Tulsa law firm of Hall, Estill, Gable and Collingsworth, et al. Consequently, Mrs. Swimmer's employment interest and all other interests reported by Mr. Swimmer are in compliance with 30 U.S.C. §1211(f).

3. Mrs. Swimmer will continue her employment as an attorney for the Tulsa law firm of Hall, Estill, Gable, Collingsworth, et al. The senior partners of the firm have been advised of Mr. Swimmer's potential employment as Assistant Secretary for Indian Affairs and they have agreed to screen Mrs. Swimmer from assignments dealing with any issues involving Indians or the Department of the Interior. Department records show this firm does represent individuals

in three cases pending before the Solicitor of the Department of the Interior. Mrs. Swimmer is not involved in these cases and as a salaried employee of the firm, none of the cases on which she works involve fees from claims against this Department or from clients who have litigation before the Department. Further, it is very unlikely that the Assistant Secretary - Indian Affairs would ever have to get involved in the current cases. Based on these facts a recusal statement from Mr. Swimmer is not necessary and upon Mr. Swimmer's confirmation, the firm will formalize its agreement and provide copies to us to document resolution of any potential conflict of interest situation resulting from Mrs. Swimmer's employment.

4. The assets of the S.M.J. Trust consist of mineral deeds located on various sites within Oklahoma. The assets in this Educational Trust do not involve any Federal lands.

5. Mr. Jerry Hayden who is listed as the source of insurance commission fees on Page 3 of Schedule A of the SF-278, is an insurance agent with whom Mr. Swimmer was associated through his former interest in the Cherokee Insurance Agency, Inc. Mr. Swimmer sold his interest in the Insurance Agency in 1984. To our knowledge, Mr. Hayden has no business dealings with the Department of the Interior.

6. Mr. Swimmer left his salaried position with the First National Bank of Tahlequah in 1984. He will resign from the majority of the various societies, foundations and other organizations listed on Schedule D of the SF-278. Mr. Swimmer will retain a non-officer position with the Cherokee Foundation which is an educational foundation and he will, of course, retain his membership in the listed Bar Associations. Continuance of these associations is in full compliance with applicable statutes and regulations.

7. Upon confirmation, Mr. Swimmer will resign his position as Chief of the Cherokee Nation of Oklahoma. His resignation from this position will also end his service as a member of the Board of Cherokee Nation Industries, as Director of the Intertribal Council of Five Civilized Tribes and as Chairman of the Arkansas Riverbed Authority. These positions will be assumed by the new Principal Chief of the Cherokee Nation.

8. A review of pending litigation in our Department revealed five cases which are of direct and substantial interest to the Cherokee Nation of Oklahoma. The five cases are:

   (a) Rebecca Sisco v. Clark, No. 84-711-C (USDC - E.D., OK)

   (b) Cherokee Nation of Oklahoma v. U.S., No. 84-2355 (10th Cir)

   (c) Wheeler v. Department of the Interior, No. 84-116-C (USDC - N.D., OK)

   (d) Wheeler v. Swimmer, No. 84-C-305 C (USDC - N.D., OK)

   (e) Nero v. Cherokee Nation of Oklahoma, No. 84-C-557-C (USDC - W.D., OK)

Because of Mr. Swimmer's prior interests in these cases, as Chief of the Cherokee Nation, he has agreed, upon confirmation, to recuse himself from any involvement as Assistant Secretary in these five cases. The Cherokee Nation is somewhat unique in that it is only rare that per capita distributions are made for the benefit of individual members of the tribe. Nevertheless, Mr. Swimmer has consented to, at the time of occurance, if any, recuse himself from involvement as Assistant Secretary in any particular matter that may come before him involving such a per capita distribution to his tribe.

Mr. Swimmer has also been informed of the prohibitions of 18 U.S.C. §207(g) concerning potential representations by his business partners on matters in which he may be personally and substantially involved as Assistant Secretary. Although no such representations are anticipated, Mr. Swimmer has informed his business partners about this prohibition.

Based on this analysis, I have determined that the reported interests are in compliance with all applicable statutes and regulations that will apply to Mr. Swimmer as Assistant Secretary for Indian Affairs.

Please call me or my Deputy Gabe Paone if you have any further questions.

Sincerely,

Gerald R. Riso

Gerald R. Riso
Principal Deputy Assistant Secretary
Policy, Budget and Administration
and Designated Agency Ethics Official

Enclosures

U.S. Office of Personnel Management

Financial Disclosure Report

Page 1

Reporting Status *(Check Appropriate Box)*

☐ Incumbent ☒ New Entrant, Nominee, or Candidate ☐ Termination Filer

DEPT. OF THE INTERIOR RECEIVED ★ SEP 21 1985 ★ ETHICS OFFICE

		Agency Use Only SEP 21 1985	OGE Use Only OCT 2 - 1985	Date of Nomination *(Mo., Day, Yr.)* September 27, 1985
				Termination Date *(If Applicable)* *(Month, Day, Year)*
Reporting Individual's Name	Last Name SWIMMER	First Name and Middle Initial ROSS O.		
Position for Which Filing	Title of Position ASSISTANT SECRETARY - INDIAN AFFAIRS	Department or Agency *(If Applicable)* U.S. DEPARTMENT OF THE INTERIOR		
Location of Present Office	Address *(Number, Street, City, State and ZIP Code)* P.O. BOX 948 TAHLEQUAH, OKLAHOMA 74465	Telephone No. *(Include Area Code)* (918) 456-0671		
Position(s) Held With the Federal Government During the Preceding 12 Months *(If Not Same as Above)*	Title of Position(s) and Date(s) Held CO-CHAIRMAN, PRES. COMM. ON INDIAN RESERVATION ECONOMIES 10/83-12/84. CONSULTANT-ASST. SEC.INDIAN AFFAIRS, DOI 7/85-9/85			
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination ENERGY AND NATURAL RESOURCES & SELECT COMM. ON INDIAN AFFAIRS	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No		
Certification I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief.	Signature of Reporting Individual Carl Swimmer	Date *(Month, Day, Year)* 9-24-85		
Other Review (If desired by agency)	Signature of Other Reviewer	Date *(Month, Day, Year)*		
Agency Ethics Official's Opinion The information contained in this report discloses no conflict of interest under applicable laws and regulations.	Signature of Designated Agency Ethics Official/Reviewing Official	Date *(Month, Day, Year)* 10/2/85		
Office of Government Ethics Use Only	Signature David H. Martin	Date *(Month, Day, Year)* 10-4-85		

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

Entries marked with asterisk were added by OGE from information obtained during telephone conversation of 10/3/85 with [illegible].

See letter of October 2, 1985, from the Department of the Interior for additional information regarding assets and statutory restrictions.

(Check box if comments are continued on the reverse side) ☐

Reporting Periods

Incumbents: Complete Schedules A, B, C, and Part I of D. The reporting period is the preceding calendar year except for Part II of Schedule C and Part I of Schedule D where you must also include any positions held or agreements or arrangements made from the beginning of the filing year until the date you file.

Termination Filers: Complete Schedules A, B, C, and Part I of D. The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination.

Nominees, New Entrants and Candidates for President and Vice President: Complete Schedules A, C, and D. (Candidates do not file Part II of Schedule D.)

- **Schedule A**—The reporting period for Income (BLOCK C) and Transactions Test (BLOCK D) is the preceding calendar year and the current calendar year up to the date of filing. Value assets in BLOCK B as of any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part I** (Liabilities)—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part II** (Agreements and Arrangements)—Show any agreements or arrangements as of the date of filing.
- **Schedule D**—The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

PREVIOUS EDITION USABLE

278-109

NSN 7540-01-070-8444

FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. 3206-0092

Reporting individual's Name				
ROSS SWIMMER	**Assets and Income**	Page Number	2	Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, nsions, IRA assets, assets of certain s, commodities futures, personal busi s and partnership interests. **Exclude** ur personal residence unless you rent it ut. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the **actual amount** of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

BLOCK A Assets & Income Sources		**BLOCK B** Valuation of Assets							**BLOCK C** Income																		**BLOCK D** Transactions Test	
Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐		Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)											If yes, complete Schd. B Part I for those assets including those sold for a loss	
S or DC		None (or less than $1001)	$1,001 $5,000	$5,001 $15,000	$15,001 $50,000	$50,001 $100,000	$100,001 $250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101 $1,000	$1,001 $2,500	$2,501 $5,000	$5,001 $15,000	$15,001 $50,000	$50,001 $100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria		YES	NO
Examples	X Y Z Common				x				x									x									x	
	Doe Jones & Smith, Hometown, USA			x											ptnrshp income									$50,000				
1	First National Bank of Tahlequah Common	X	(Sold Sept. '84)						X_1			X_2									X_1		X_2					
2 S	Hall, Estill, Gable Collingsworth Law Firm														Salary													
3 S	Turner Bros. Coal Co.														Salary													
4	Mahada Energy Corp.	X														X												
5	Chapco Partnership					X									Lot Sales									1,586				
6	Hitchcock N.E. Prospect				X										Oil & Gas Lmtd. Ptnrshp.									1,814				
7	McSwiman Partnership		X												Note Receivable									362				
8	Geosearch Exploration Ltd.		X													X												
9	Trans Atlantic Resource Corp.			X												X												
10	Norwood Ltd.		X													X												

PREVIOUS EDITION USABLE

276-209

FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. 3206-0092

Reporting Individual's Name		Page Number	Schedule
ROSS SWIMMER	**Assets and Income**	3	A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal business and partnership interests. **Exclude** personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the **actual amount** of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

	BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
	Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)										If yes, complete Schd. B Part I for those assets including those sold for a loss	
S or DC		None (or less than $1001)	$1,001 $5,000	$5,001 $15,000	$15,001 $50,000	$50,001 $100,000	$100,001 $250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101 $1,000	$1,001 $2,500	$2,501 $5,000	$5,001 $15,000	$15,001 $50,000	$50,001 $100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	YES	NO
Examples	X Y Z Common				x				x									x								x	
	Doe Jones & Smith, Hometown, USA			x											ptnrshp income									$50,000			
1	Harmon-Swimmer Partnership			X												X											
2	Ltd partnership in apt. and office building in Texas Gibson Partnership			X												X											
3	Swimmer-Hendricks Apts.				X											X											
4	Carlile, McSpadden, Swimmer Ptn.-general partnership-[illegible] Tahlequah, OK				X											X											
5	Cherokee Nation Industries														Board Fees									900			
6	Jerry Hayden														Insurance Commiss.									4,129			
7	Cherokee Insurance Agency, Inc.	X	(Sold 1984)						X											X							
8	Cherokee Nation of Oklahoma														Salary									48,322			
9	First National Bank of Tahlequah														Salary									59,134			
10	Third Royalty Trust	X	(Transferred to the SMJ Trust in 1984)																								

PREVIOUS EDITION USABLE

278-209

FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. 3209-0002

Reporting Individual's Name		Page Number	Schedule
ROSS SWIMMER	**Assets and Income**	4	A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. **Exclude** your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the **actual amount** of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

BLOCK A Assets & Income Sources		**BLOCK B** Valuation of Assets							**BLOCK C** Income																	**BLOCK D** Transactions Test	
Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐		Category of Value (X)							Type of Income (X)						Other (Specify Type)	Category of Amount of Income (X)								Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	If yes, complete Schd. B Part I for those assets including those sold for a loss.	
S or DC		None (or less than $1001)	$1,001 $5,000	$5,001 $15,000	$15,001 $50,000	$50,001 $100,000	$100,001 $250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust		None (or less than $101)	$101 $1,000	$1,001 $2,500	$2,501 $5,000	$5,001 $15,000	$15,001 $50,000	$50,001 $100,000	Over $100,000			YES	NO
Examples	X Y Z Common				x				x									x								x	
	Doe Jones & Smith, Hometown, USA			x											ptnrshp income									$50,000			
1 DC	S.M.J. Trust				X										Royalty income						X			Approx $17,[illegible]			
2																											
3																											
4																											
5																											
6																											
7																											
8																											
9																											
10																											

PREVIOUS EDITION USABLE

FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. 3206-0002

Reporting Individual's Name
ROSS SWIMMER

Page Number	5	Schedule B

Part I
Transactions

Incumbents and Termination Filers only: Report any purchase, sale or exchange by you, your spouse or dependent child during the reporting period of any real property, stocks, bonds, commodities futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss. Do not report a transaction involving property used solely as your personal residence, or a transaction between you, your spouse or your dependent child.

NONE ☐

S or DC		Identification of Assets	Type of Transaction (X)				Amount of Transaction (X)					
			Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	$1,001 $5,000	$5,001 $15,000	$15,001 $50,000	$50,001 $100,000	$100,001 $250,000	Over $250,000
	Example	X Y Z Common	x			2/1/83			x			
1												
2		Not Applicable										
·												
5												
6												

Part II
Gifts, Reimbursements and Travel Expenses

Incumbents and Termination Filers only:
Report the source, a brief description and the value of: (1) in-kind gifts of transportation, lodging, food or entertainment received from one source totaling $250 or more unless received as personal hospitality at the donor's personal or family residence, (2) other gifts received from one source totaling $100 or more in value, and (3) cash reimbursements of $250 or more received from one source. Exclude gifts and reimbursements received by your spouse that were given totally independent of their relationship to you. **Exclude** transportation, lodging, food and reimbursements from the U.S. Government. For (1) and (2), **exclude** gifts from relatives and **exclude** gifts of $35 or less when aggregating them for the total from one source. See instructions for further exclusions.

NONE ☐

S		Source *(Name and Address)*	Brief Description	Value
	Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/83	$500
		Nat'l Assn. of Rock Collectors, NY, NY	Leather briefcase for retiring president	$125
1				
2		Not Applicable		
3				
4				
5				
6				

PREVIOUS EDITION USABLE

[illegible]
U.S. Office of Personnel Management

[illegible]

Reporting Individual's Name ROSS SWIMMER	Page Number	6	Schedule C

Part I
Liabilities

All Filers: Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse or dependent child. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances, and liabilities owed to relatives. See instructions for revolving charge accounts.

NONE ☐

	Creditor (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (X): $10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
S or DC Examples	First District Bank, Washington, DC	Mortgage on rental property, Rehoboth Beach, Delaware	1981	13%	25 yrs			X		
	John Jones, 123 J St., Washington, DC	Promissory note	1979	10%	on demand	X				
1	First National Bank, Oklahoma City, OK (Paid by loan from Commercial Bank, Muskogee)	Bank Stock Loan	1983	Prime	On Demand				X	
2	Commercial Bank and Trust, Muskogee, OK	Bank Stock Loan	1984	Prime	On Demand				X	
3	First National Bank, Fort Gibson, OK	Promissory Note	1984	Prime	On Demand		X			
4	American Bank, Muskogee, OK	Real Estate Mortgage on Chapco Partnership	1984	Prime + 1	On Demand				X	
5	Commercial Bank, Muskogee, OK	Mortgage on Swimmer-Hendricks Apts.	1982	Prime	On Demand		X			
6	Furman Bryant, Sparta, Wisconsin	Mortgage on property held by Carlile, McSpandden, Swimmer Partnership	1977	7%	12Yr.		X			

Part II
Agreements Or Arrangements

All Filers: Report your agreements or arrangements for future employment, leaves of absence, continuation of payment by a former employer (including severance payments), or continuing participation in an employee benefit plan. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

NONE ☒

	Status and Terms of any Agreement or Arrangement	Parties	Date (Mo., Yr.)
Example	Pursuant to partnership agreement, will receive capital account & partnership share calculated on service performed through 11/83	Doe Jones & Smith, Hometown, USA	7/75 ptnership agmnt

PREVIOUS EDITION USABLE

278-108

FPM Chapter 734
U.S. Office of Personnel Management

Reporting Individual's Name

ROSS SWIMMER

Form Approved
OMB No. 3209-0002

Page Number	7	Schedule D

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/82	6/83
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/75	11/83
	herokee National Historical Society P.O.Box 515 Tahlequah, OK	History/cultural	President	1973	Present 1/
	Cherokee Foundation 317 Main Mall Tulsa, OK 74103	Educational	Treasurer	1973	Present
	Tahlequah Planning &Zoning Commission City Hall Tahlequah, OK	Government	Chairman	1975	1984
	Presidential Commission of Indian Reservation Econ. No address	U.S. Government by appointment of President	Co-Chairman	1983	1984
	Council of Energy Resource Tribes 1580 Logan St. Denver, CO 80203	Non-profit energy consultant to Indian Tribes	Chairman	1982	Present 1/
	Board of Trustees, Oaks Indian Center Box 10 Oaks, OK 74359	Children's shelter & school	Member	1975	19[illegible]4

1/ Upon confirmation, I will resign from this position.

CONTINUED ON PAGE 8.

Part II
Compensation In Excess Of $5000 Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☐

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith) Hometown, USA	Legal services in connection with university construction
	Cherokee Nation of Oklahoma, P. O. Box948 Tahlequah, OK 74465	Salary as Principal Chief 1/
	First National Bank, P.O. Box 59 Tahlequah, OK 74465	Salary as President
	U.S. Department of the Interior	Salary as Co-Chairman of Presidential Commission on Indian Reservation Economies

1/ Upon confirmation, I will resign from this position.

PREVIOUS EDITION USABLE

278-108

[illegible]
U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Reporting Individual's Name ROSS SWIMMER	Page Number 8	Schedule D

Part I
Positions Held Outside U.S. Government

CONTINUED FROM PAGE 7 - PART I

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☐

Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/82	6/83
Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/75	11/83
.rector, Intertribal Council of Five Civilized Tribes .O. Box 59, Durant, OK 74701	Intertribal Organization	Director	1975	Present 2/
Director, Oklahoma Health Sciences Foundation 324 N. Robinson, Oklahoma City, OK 73102	Health promotion, arm of Univ. o f OK	Director	1975	Present 1/
Director, Northeastern Oklahoma State University Foundation NSU, Tahlequah, OK 74464	Educational	Director	1977	Present 1/
Cherokee County Bar Association County Courthouse, Tahlequah, OK 74446	Professional	Member	1973	Present
Oklahoma Bar Association P.O. Box 53036, Oklahoma City, OK 73105	Professional	Member	1967	Present
American Bar Association 750 N. Lake Shore, Chicago, IL 60611	Professional	Member	1967	Present
Oklahoma Bankers Association P.O. Box 18246, Oklahoma City, OK 73105	Professional	Member	1974	1984
Oklahoma Historical Society Historical Building, Oklahoma City, OK	Cultural	Member	1975	Present 1/
Tahlequah Area Chamber of Commerce 101 S. Muskogee, Tahlequah, OK	Business Association	Member	1979	Present 1/
Tahlequah Arts and Humanities Council Tahlequah, OK	Cultural/Educational	Member	1973	Present 1/
Oklahoma State Economic Development Commission 4024 N. Lincoln, Oklahoma Ciry, OK	Business Development	Appointment by Governor	1981	Present 1/
Southern Industrial Development Council 1644 Tallie Circle, Atlanta, GA 30329	Industrial Development Association	Member	1983	1984
Independent Sector Board Member 1828 L. St. NW, Washington, D.C.	Assoc. of Non-profit Organizations	Member	1984	Present 1/
Arkansas Riverbed Authority P.O. Box 948 Tahlequah, OK	Riverbed Mgmt. Organization of Three Tribes	Chairman	1980	Present 2/

CONTINUED ON PAGE (9)

CONTINUED ON PAGE (9)

1/ Upon confirmation, I will resign from this position.
2/ The new Principal Chief of the Cherokee Nation will assume this position.

[illegible] (Rev. [illegible]85)
[illegible]
[illegible] Office of Personnel Management

OMB No. [illegible]

Reporting Individual's Name
ROSS SWIMMER

Page Number	9	Schedule D

Part I
Positions Held Outside U.S. Government

CONTINUED FROM PAGE 8

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/82	6/83
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/75	11/83
	ission on Reform of State Government e Capitol, Oklahoma City, OK	Government	Appointed by Governor	1984	1984
	ate Committee on Tribal Relations ate Capitol, Oklahoma City, OK	Government	Member	1984	Present1/
	iskell Foundation Box H-1305, Lawrence, KS 66046	Educational Foundation	Member	1985	Present1/
	Save the Illinois River (STIR) Box 419, Tahlequah, OK	Non-profit Environmental	Chairman	1984	Present1/
	American Bankers Association 1120 Connecticut Ave. NW, Washington, D.C.	Professional	Member	1974	1984
	Oklahoma Advisory Commission to the U.S. Commission on Civil Rights, Washington, D.C.	Advisory Committee	Member	1985	Present1/

1/ Upon confirmation, I will resign from this position.

SUPPLEMENT TO SF-86

1. First National Bank, P. O. Box 59, Tahlequah, Oklahoma 74465. Purchased interest in the bank in 1974 and subsequently owned 18% of outstanding stock. Served as Executive Vice President during 1974 and became President in 1975. Also served on Board of Directors from 1974-1984. I sold my interest in the bank in 1984 and remained on Board of Directors as an advisory director. I do not own any stock of the bank at this time.

Trans Atlantic Resource Corp., 7611 E. 46th Place, Tulsa, OK 74145. Oil and gas limited partnership. Investment made in 1984, ownership is .005%. No management duties.

Harmon-Swimmer Partnership, 1330 E. 25th St., Tulsa, OK 74114. Passive real estate investment made in 1973. Value of property approximately $12,000.00. My ownership is one-half.

Chapen Partnership, c/o Gary Chapman, 100 S. Muskogee, Tahlequah, OK 74464. One-half owner of real estate development. Initial interest purchased in 1978. Developed lots for sale.

McSwimman Partnership, c/o Gary Chapman, 100 S. Muskogee, Tahlequah, OK 74464. One-fourth interest in land purchase. One-fourth interest value approximately $4,000.00. Property has been sold and partners are being paid on a long-term note.

Norwood, Ltd., P. O. Box 690034, Tulsa, OK 74169. Limited partnership interest in a Tulsa apartment complex. Investment was $15,000.00. Value is less than investment. No management or operational position.

Third Royalty Trust, 317 S. Main Mall, Tulsa, OK 74103. Oil and gas royalty trust owned by myself and wife, Margaret Swimmer. The royalties and minerals were transferred to the S.M.J. Trust in 1984. S.M.J. Trust is an educational trust organized for the benefit of our two children, Joseph and Michael Swimmer. Trustee is Peter A. Manhart, 317 S. Main Mall, Tulsa, OK 74103.

Swimmer-Hendricks Apartments, 317 S. Main Mall, Tulsa, OK 74103. This is a partnership in which I own 1/2 interest. Approximate value less mortgages is $5,000.00 for 1/2 interest. The apartments are located in Tahlequah, Oklahoma.

Cherokee Insurance Agency, 100 S. Muskogee, Tahlequah, OK 74464. Subchapter S corporation which sells credit life and regular life insurance. My ownership was approximately 20%. Sold in 1984. I was a licensed agent for the business.

Mahada Energy Corporation, 2001 Kirby Drive, Suite 1006, Houston, TX 77019. I had a working interest in various oil and gas leases held by the corporation. There was no production and there is no value to my interest. My interest was assigned to the company in 1985 for no consideration.

Cherokee Nation Industries, P. O. Box 860, Stilwell, OK 74969. Serve as member of Board of Directors. No ownership of stock. Also, I am Principal Chief of the Cherokee Nation, a federally recognized Indian Tribe, that owns approximately 90% of the company.

Ross Swimmer

PN616 NOMINATION REFERENCE AND REPORT

SENATE OF THE UNITED STATES,
September 30, 1985.
(Under authority of the order of the
Senate of January 3, 1985.)

Ordered, that the following nomination be referred to the Select Committee on Indian Affairs:

Ross O. Swimmer, of Oklahoma, to be an Assistant Secretary of the Interior, vice Kenneth L. Smith, resigned.

, 1985.

Reported by Mr. with the

recommendation that the nomination be *confirmed.*

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

October 10, 1985

The Honorable Mark Andrews
Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Pursuant to Section 201(b) of the Ethics in Government Act of 1978, as amended, I hereby certify and report that the information required by Section 202(a)(1)(A) with respect to earned income and honoraria, as set forth in my Financial Disclosure Report (SF 278) dated September 24, 1985, is current as of October 10, 1985. I further certify that I have transmitted copies of this report to the Designated Agency Ethics Official of the Department of the Interior and to the Office of Government Ethics.

Ross O. Swimmer
Ross O. Swimmer

Washington)
)ss
District of Columbia)

Subscribed and sworn before me on this 10th day of October, 1985.

Barbara Diehl
Notary Public

My commission expires: 3/30/86

cc: The Honorable John Melcher

UNITED STATES SENATE
SELECT COMMITTEE ON INDIAN AFFAIRS

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Swimmer (LAST) Ross (FIRST) O. (OTHER)

Position to which nominated: Assistant Secretary-Indian Affairs Date of nomination: 9-26-85

Date of birth: 26 (DAY) 10 (MONTH) 43 (YEAR) Place of birth: Oklahoma City, Oklahoma

Marital status: Married Full name of spouse: Margaret Ann (McConnell) Swimmer

Name and ages of children: Joseph - age 15
Michael - age 13

Education:

Institution	Dates attended	Degrees received	Dates of degrees
University of Okla.	1961-1965	B.A.	1965
University of Okla.	1965-1967	J.D.	1967
Putnam City High School		Diploma	1961

Employment record: List below all positions held since college, including the title and description of job, name of employer, location, and dates.

(1) Attorney, Hansen, Peterson & Thompkins, Law Firm. Began as associate and became partner - general legal work, property, corporate 1967-1972, Oklahoma City, Oklahoma

(2) Executive Vice President and President, First National Bank, Tahlequah, Oklahoma, 1974-1984

(3) General Counsel, Cherokee Nation, Tahlequah, Oklahoma, 1973-1975.

(4) Principal Chief, Cherokee Nation, 1975-present.

Employment record—Continued

Military service: Enter all military service if not included above: service, dates, rank, type of discharge.

None

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Honor Society-High School; Dean's Honor Roll-undergraduate and law school; Phi Delta Phi legal fraternity; Businessman of year, Tahlequah; Outstanding Citizen, Stilwell, Okla.; special award, Indian Health Service

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (If any)	Dates
Cherokee National Historical Soc.	President	1973-Present
Cherokee Foundation	Secy/Treas.	1973-Present
Tahlequah Planning & Zoning	Chairman	1975-1984
Council of Energy Resource Tribes	Chairman	1982-Present
Director, Board of Trustees, Oaks Mission		1975-1984
Arkansas Riverbed Authority	Chairman	1980-Present
Director, State Economic Development Commission	2	1981-Present
Save the Illinois River (non-profit)	Chairman	1984-Present

(See attached)

Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples: Nat'l Assn. of Rock Collectors, NY, NY	Non profit education	President	6/82	6/83
Examples: Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/75	11/83
Director, Intertribal Council of Five Civilized Tribes P.O. Box 59, Durant, OK 74701	Intertribal Organization	Director	1975	Present 2/
Director, Oklahoma Health Sciences Foundation 324 N. Robinson, Oklahoma City, OK 73102	Health promotion, arm of Univ. o f OK	Director	1975	Present 1/
Director, Northeastern Oklahoma State University Foundation NSU, Tahlequah, OK 74464	Educational	Director	1977	Present 1/
Cherokee County Bar Association County Courthouse, Tahlequah, OK 74446	Professional	Member	1973	Present
Oklahoma Bar Association P.O. Box 53036, Oklahoma City, OK 73105	Professional	Member	1967	Present
American Bar Association 750 N. Lake Shore,Chicago, IL 60611	Professional	Member	1967	Present
Oklahoma Bankers Association P.O. Box 18246, Oklahoma City, OK 73105	Professional	Member	1974	1984
Oklahoma Historical Society Historical Building, Oklahoma City, OK	Cultural	Member	1975	Present 1/
Tahlequah Area Chamber of Commerce 101 S. Muskogee, Tahlequah, OK	Business Association	Member	1979	Present 1/
Tahlequah Arts and Humanities Council Tahlequah, OK	Cultural/Educational	Member	1973	Present 1/
Oklahoma State Economic Development Commission 4024 N. Lincoln, Oklahoma Ciry, OK	Business Development	Appointment by Governor	1981	Present 1/
Southern Industrial Development Council 1644 Tallie Circle, Atlanta, GA 30329	Industrial Development Association	Member	1983	1984
Independent Sector Board Member 1828 L. St. NW, Washington, D.C.	Assoc. of Non-profit Organizations	Member	1984	Present 1/
Arkansas Riverbed Authority P.O. Box 948 Tahlequah, OK	Riverbed Mgmt. Organization of Three Tribes	Chairman	1980	Present 2/

CONTINUED ON PAGE (9)

CONTINUED ON PAGE (9)

1/ Upon confirmation, I will resign from this position.

2/ The new Principal Chief of the Cherokee Nation will assume this position.

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/82	6/83
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/75	11/83
Commission on Reform of State Government State Capitol, Oklahoma,City, OK		Government	Appointed by Governor	1984	1984
State Committee on Tribal Relations State Capitol, Oklahoma City, OK		Government	Member	1984	Present1/
Haskell Foundation Box H-1305, Lawrence, KS 66046		Educational Foundation	Member	1985	Present1/
Save the Illinois River (STIR) Box 419, Tahlequah, OK		Non-profit Environmental	Chairman	1984	Present1/
American Bankers Association 1120 Connecticut Ave. NW, Washington, D.C.		Professional	Member	1974	1984
Oklahoma Advisory Commission to the U.S. Commission on Civil Rights, Washington, D.C.		Advisory Committee	Member	1985	Present1/

1/ Upon confirmation, I will resign from this position.

Published writings: List the titles, publishers and dates of any books, articles, or reports you have written.

None

Qualifications: State fully your qualifications to serve in the position to which you have been named. (attach sheet)

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Yes

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization.

No, my plan is a return to the private sector of banking, business or law. I have no commitments.

3. Has anybody made you a commitment to a job after you leave government?

No

4. (a) If you have been appointed for a fixed term, do you expect to serve the full term?

N.A.

(b) If you have been appointed for an indefinite term, do you have any known limitations on your willingness or ability to serve for the foreseeable future?

No

Potential conflicts of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

Trans Atlantic Resource Corp. - Oil & gas partnership

Board of Directors, Cherokee Nation Industries, Inc.

Hitchcock N.E. Prospect, Oil and gas

Board of Directors, Council of Energy Resource Tribes

3. Describe any business relationship, dealing or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

Principal Chief, Cherokee Nation of Oklahoma

First National Bank of Tahlequah, Okla.

Legal representation of the Cherokee Nation

4. List and describe any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or for the purpose of affecting the administration and execution of national law or public policy.

On behalf of Cherokee Nation, Cherokee Nation Housing Authority,

Cherokee Nation Industries, Independent Sector. RE: Tax Status Act

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

Recuse myself from dealing with such matters, divest myself of

ownership in business interests.

6. Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official indicating what those laws and regulations are and how you will comply with them.

UNITED STATES SENATE
SELECT COMMITTEE ON INDIAN AFFAIRS

FINANCIAL STATEMENT

Name: Swimmer (LAST) Ross (FIRST) O. (OTHER)

Position to which nominated: Assistant Secretary of Interior Indian Affairs

Provide a complete, current financial net worth statement which itemizes all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) and all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS	
Cash on hand and in banks	35 000 00
U.S. Government securities—add schedule	
Listed securities—add schedule	360 00
Unlisted securities—add schedule	12 000 00
Accounts and notes receivable:	
Due from relatives and friends	
Due from others	
Real estate interests—add schedule	582 000 00
Personal property	60 000 00
Life insurance—cash value	10 000 00
Other assets—itemize:	
Total assets	749,360 00

LIABILITIES	
Notes payable to banks—secured	24 000 00
Notes payable to banks—unsecured	40 000 00
Notes payable to relatives	
Notes payable to others	8 000 00
Accounts payable	
Unpaid income tax	
Other unpaid tax and interest	
Real estate mortgages payable—add schedule	
Chattel mortgages and other liens payable	
Other debts—itemize:	
CONTINGENT LIABILITIES	
As endorser, comaker or guarantor	
On leases or contracts	
Legal Claims	
Other	
Total liabilities	72 000 00
Net worth	677 360 00

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers.

Oil and Gas Investments: Hitchcock NE Prospect $1,000.00/mo.; Trans Atlantic Resource Corp., $50/mo.; Geosearch $100/mo.

Real Estate Lot Sales $50,000.00

Note Proceeds - McSwiman Partnership $200/yr.

2. Are any assets pledged? (Add schedule.)

714 Brentwood former home in Tah equah, Oklahoma.

First mortgage, Tahlequah Savings & Loan

3. Are you currently a party to any legal action?

Wheeler vs. Interior, Swimmer, et al (election case) on appeal to 10th circuit.

Nero vs. Swimmer (election case) Federal Dist. Court, Tulsa, Okla.

4. Have you ever declared bankruptcy?

No

5. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain.

Yes

6. Has the Internal Revenue Service ever audited your Federal tax return? If so, what resulted from the audit?

No

AFFIDAVIT

) ss

, being duly sworn, hereby states that he/she has read and signed the foregoing Statement for Completion by Presidential Nominees including the Financial Statement and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

Ross O Swimmer

Subscribe and sworn before me this 10th day of October, 1985

Barbara Diehl
Notary Public

SCHEDULE 1 - REAL ESTATE INTERESTS

	Current Value	Debt
House, 714 Brentwood Tahlequah, OK	$ 110,000.00	$ 24,000.00
Chapco, lot development Tahlequah, OK 1/2 interest	97,500.00	40,000.00
Hitchcock NE Prospect Oil & Gas	20,000.00	0
Geosearch Exploration	5,000.00	0
Trans Atlantic Resource Corp.	6,000.00	0
Norwood, Ltd., apt. partnership	1,000.00	0
Swimmer-Hendricks Apts.	20,000.00	0
Harmon-Swimmer Partnership	8,000.00	0
Gibson Partnership	10,000.00	0
Carlile, McSpadden, Swimmer Partnership	50,000.00	8,000.00
House, 1330 E. 25th Tulsa, OK	300,000.00	0
McSwiman - 1/4 interest	4,500.00	
	582,000.00	72,000.00

Listed Stock:

Federal National Mortgate Association 30 shares @12.00/share $360.00

Unlisted Stock:

Cherokee Canvas Company 12,000 shares @1.00/share $12,000.00

Appendix B

STATEMENT OF SUZAN SHOWN HARJO, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS, FOR THE RECORD OF THE HEARING TO CONFIRM MR. ROSS O. SWIMMER AS INTERIOR ASSISTANT SECRETARY FOR INDIAN AFFAIRS, BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, OCTOBER 16, 1985, WASHINGTON, D.C.

Mr. Chairman and Members of the Committee, we are pleased that the President finally has nominated his choice for Interior Assistant Secretary for Indian Affairs. During the eight months since Secretary Hodel promised the Senate a speedy nomination for this post, we have been without a high-level Administration focal point for consultation with Indian and Native governments in the decision-making processes in the Interior Department, particularly in the development of Administration positions in legislation and litigation and in the crafting of the budget to meet the needs in Indian country and to fulfill the United States obligations to Indian and Native governments and individuals. We wish the nominee well in his important position.

The purpose of this statement is to provide an overview of the myriad concerns regarding the Interior Department's actions and inactions affecting Indian and Native governments and people, as those concerns were recently raised by more than 125 Indian and Native governmental delegates to the 42nd Annual Convention of the National Congress of American Indians (NCAI), October 7 - 11, in Tulsa, Oklahoma. Most of these concerns go to the seeming inability or unwillingness in the system to respond to Indian initiatives in a timely manner and the failure to afford time for consultation regarding Interior initiatives.

The cases of tribal programmatic requests languishing beyond any reasonable time are known to the Committee, as you are called upon daily to break procedural logjams and to force responsiveness. Organizationally, the NCAI is experiencing this situation now. In March of this year, we were asked to cut our proposed request for general support in half, in order to bring our grant period into line with the federal fiscal year, and to submit during the summer a request for FY1986 funding. We did so, submitting our proposal in June for the October 1 start-up period. Today, in mid-October, we still await a response. We are told that there is no decision, that there is no reason that can be discussed for the lack of a decision and that there is no one we can discuss the matter with at this point. Through the Washington rumor mill, we hear that our organization - the oldest and largest national organization serving a membership of Indian and Native governments and individuals - is not a favored organization of the Administration and should not look forward to receiving policy-analysis and information-dissemination funding. We hope that this is not the case and that the Indian affairs under Mr. Swimmer's direction will not operate on a most favored organization or nation basis.

Since much of the Committee's casework and many of your oversight hearings result from the lack of Interior consultation with those most directly affected by its decisions, you are well aware of the need for the Department to consult with Indian and Native governments. In our testimony on the confirmation of Secretary Hodel, on February 1 of this year, we pointed out that the Secretary of the Interior is required by the 1934 Indian Reorganization Act to advise all Indian and Native governments of budget levels pertaining to federal programs and services, prior to their submission to the budget office and prior to their submission to Congress.

This law has not been carried out in any of the 51 years since its enactment, nor has it been carried out in the Interior development of the FY1987 budget submission to the Office of Management and Budget. Immediate consultation on the FY1987 budget would signal a new day in federal-tribal relations and would put teeth into the President's government-to-government policy statement, as would immediate consultation with Indian and Native governments regarding the upcoming reorganization of the Bureau of Indian Affairs (BIA) which was reported in the offing in a recent Secretary's Office weekly report to the White House Office of Intergovernmental Relations. It is our understanding that various exercises have taken place within the Department regarding a reorganization of the BIA that would eliminate or transfer from the Department education and social services functions and programs. We seek the Committee's assistance in discovering the status of any such reorganization exercises. We also request your assistance to assure that Indian and Native governments will be involved, as the 1934 law contemplates, in such efforts from this point on.

Another major area of concern expressed by delegates to the 42nd Annual NCAI Convention addresses the issue of Indian and Native governments receiving appropriate and necessary technical assistance regarding both renewable and non-renewable resources. Indian nations are in dire need of such basic information as easement accountings, boundary surveys, resource inventories and soil, water, fisheries and other key studies. Tribes also need to have a resource management agency that has an adequate data base and computer system to enable them to achieve economic competitiveness and the ability to protect their resources and resource assets. In the area of water resources, we have been successful in obtaining Congressional appropriations directives that Interior funding for water studies and inventories will be provided to Indian and Native governments, irrespective of their negotiation or litigation posture. We were, therefore, quite surprised that the Interior Secretary stated to our Convention delegates that "(w)hether in the area of land, water or energy, Tribes that want to negotiate rather than litigate will find plenty of technical surport to assist in their negotiations." We hope that this does not mean that Indian and Native governments which choose to or are forced to litigate will not receive plenty of technical support, and we ask the Committee to inquire into this area on behalf of those Indian nations now in litigation, soon to be in litigation and those simply wishing to have technical assistance and data outside a litigation or negotiation context.

During the period of waiting for an Indian Affairs Assistant Secretary to be named, we have seen a concerted effort to eliminate the Interior Board of Indian Appeals. As limited as it is, the Board of Indian Appeals provides the only semblance of due process for appeals of administrative decisions within the Department. We hope that Mr. Swimmer will be confident enough in the fairness and justness of his decisions to allow for the continuation of this important appeals process, and we ask that the Committee convey the NCAI opposition to the elimination of the Board of Appeals to Mr. Swimmer and request a statement of his view on the matter.

During this same period, the Interior Department has taken positions against Indian interests and without consultation in various areas affecting the religious and cultural rights of traditional Indians and the resource management and regulatory rights of Indian governments. Several examples of these actions were addressed during the NCAI Convention, which condemned the Interior positions unanimously. Examples of these adverse actions include the imposition of Fish and Wildlife Service (FWS) guidelines restricting tribal regulatory authority concerning migratory birds; the Interior positions opposing treaty, religious and tribal regulatory rights in the Dion case and in legislation regarding endangered species; the BIA restriction of the religious and regulatory rights regarding ceremonial and other fishing of the Hoopa Valley Tribe; and the Interior Department's failure to support appropriations of $2.1 million in FY1986 for Indian governmental implementation of the Pacific Salmon Treaty Act of 1985 to meet tribal research and management obligations. Since April of this year, our organization has attempted to obtain answers from the Department regarding various conservation and religious freedom laws and its efforts to consult with and protect Indian interests. To date, we have not received responses to our communications. We hope that Mr. Swimmer will be particularly communicative and sensitive concerning Indian and Native cultural, religious and regulatory rights and will engage in constructive dialogue with those whose rights are at stake. Three of the above four positions are possible to resolve at this time, and we urge that the Committee urge that speedy solutions be sought.

In another area of tribal self-regulation, the Interior Department has sent confusing signals, at best, regarding gaming in Indian country. In the absence of a clear Interior position, various offices in the Justice Department are developing ad hoc policy in this area, primarily against the Indian interest. Since the proceeds from gaming operations provide a vitally needed source of revenue in Indian country, we hope that Mr. Swimmer will take a clear position in pending legislation, supporting Indian governmental control of gaming operations in Indian country, opposing state interference in Indian governmental regulation of gaming operations, supporting regulatory mechanisms that require consultation with Indian governments, supporting the consideration of gaming operations on the basis of merit for economic development, supporting audit requirements compatible with existing Indian governmental accounting procedures and schedules and supporting assistance to Indian governments in the development of regulatory ordinances and contracts with gaming management organizations and individuals. This is the position adopted unanimously by the 42nd Annual NCAI Convention.

We urge Mr. Swimmer and the Committee to support the tax-exempt financing now available to Indian governments under the Indian Tribal Governmental Tax Status Act and Treasury's implementing regulations by urging that the temporary regulations be issued as final regulations as soon as possible. We also urge that Mr. Swimmer, in his new position, enter into serious, extensive consultation with Indian and Native governmental leaders regarding the specific recommendations of the President's Report on Indian Reservation Economies regarding the timing and substance of any efforts to implement any recommendations. As a first step, we urge Mr. Swimmer and the Committee to undertake necessary steps to develop regulations applicable only to Indian and Native governments regarding contract support, as contemplated in Section 106(h) of the Indian Self-Determination and Education Assistance Act.

We request that the Committee use its good offices to urge the Secretarial establishment of a National Native American Indian Agricultural Task Force to identify problem areas and to recommend long-term and short-term goals and objectives and policy changes to enhance the delivery of agriculture program services to Indian governments, landowners and land users. This Task Force has awaited Secretarial approval under the federal advisory committee laws for a year, and there is no reasonable excuse for further delay. The NCAI also supports the pending request of the Montana Tribes for $2 million in FY1986 drought emergency monies to purchase hay for the winter feeding months for stock for the Blackfeet, Fort Belknap, Rocky Boy's, Fort Peck, Northern Cheyenne and Crow Tribes.

We urge Mr. Swimmer, when he is confirmed as Assistant Secretary for Indian Affairs, to support the immediate recognition and restoration efforts of the Alabama-Coushatta, Ysleta del Sur Pueblo and Klamath Tribes, as well as the reservation plans of the Grand Ronde Community and the Cow Creek Band of Umpqua Tribe. We further urge Mr. Swimmer to take all necessary steps to speed up the federal acknowledgment process, in order to assure that all pending determinations are made within the decade, rather than beyond the upcoming century-mark as currently scheduled. We also urge Mr. Swimmer to support the religious, cultural and Indian governmental interests of the Sioux Nations in their legislative effort to achieve the return of certain portions of the Black Hills, and to support the Cow Creek Band in its efforts to protect their Huckleberry Patch from vandalism, commercial use and development.

We urge Mr. Swimmer to coordinate with his counterparts across government to develop Indian and Native policy and programmatic initiatives to benefit Indian and Native governments and people. We would recommend as a first objective of such an assistant secretaries' group the placement of a plaque in the Tomb of the Unknown Soldier to serve as a memorial to all Indian and Native veterans who have served the United States in time of war and national emergency. Coordination and agreement on this symbolic, non-controversial matter could encourage the group to proceed to more difficult matters. Whether or not such a group is established for broad policy and programmatic matters, we urge Mr. Swimmer and the Committee to encourage the appropriate federal offices to place the plaque in Arlington National Cemetary. This is a priority issue of the delegates to the 42nd Annual NCAI Convention.

In the area of BIA employees, the Convention delegates unanimously supported the increased emphasis on the application of the Indian preference laws in all aspects of training, hiring and promotion. Additionally, the delegates supported the Omaha Tribe's efforts to prevent reprisals by federal officials against Mr. Charles P. Corke for his efforts to protect Indian resources, and supported the call of a number of Indian governments for the removal of Ms. Nancy Garrett from her position in the BIA Office of Indian Education for reasons that are well known to the Committee. We urge Mr. Swimmer to vigorously apply the Indian preference laws and to take note of the opinion of the Convention delegates regarding the above-named individuals.

In the area of Indian child welfare, we urge Mr. Swimmer and the Committee to support our position calling for an amendment to the Major Crimes Act making child molestation by an Indian of an Indian child on an Indian reservation a federal crime justiciable in federal courts and an amendment to the Indian Civil Rights Act enlarging the penalty and punishment power of tribal courts to imprison offenders for a term of one year and/or to impose a fine of $1,000. We also urge Mr. Swimmer to review and improve the BIA implementation of the Indian Child Welfare Act, so that it better meets its intended policy and programmatic goals.

NCAI also urges Mr. Swimmer to work closely with and support the efforts of Alaska Native leaders to amend the Alaska Native Claims Settlement Act to prohibit transfer of stock by any means to non-Natives who are not descendants of Native people. We urge the Committee to conduct oversight hearings on this "1991" issue of trust asset inalienability, and to require the views of the Administration and its record of consultation with Native leadership on this matter.

Finally, we urge Mr. Swimmer to pay particular attention to the education needs of Indian and Native governments and people, and to review the recent actions of the BIA which have been detrimental to progress in this area. In our recent Convention, the delegates adopted a postion paper noting that Indian education issues that faced the past Session of Congress primarily involved efforts by the Administration to redirect federal Indian policy toward a greater reliance on state and other non-federal sources of support, and the reauthorization of several Indian education statutes. The NCAI advocates the recognition, enhancement and protection of all terms and conditions of the spirit and intent of Indian treaties which call for the United States to provide for the quality education of Indian and Native people, and we call for enactment of legislation and appropriations which are more responsive to the educational needs of Indian and Native people. We urge Mr. Swimmer to review the NCAI Education Policy Position Paper, attached, and to take the earliest opportunity to meet with Indian and Native leaders and educators to develop constructive programmatic changes and to dispel the fear that Indian education will be reorganized out of the BIA and out of the scope of the U.S. obligations.

Thank you for providing an opportunity to raise these concerns, and for your efforts to assure that they are seriously addressed.

RN-T-86-2

NCAI Education Policy Position Paper
42nd Annual Convention
FY 85-86

Whereas, Indian education issues that faced the past U.S. Congress Session primarily involved efforts by the Administration to redirect Federal Indian policy toward a greater reliance on State and other non-Federal sources of support and the reauthorization of several Indian education statutes, and,

Whereas, the National Congress of American Indians advocates the recognition, enhancement, and protection of all terms and conditions of the spirit and intent of Indian treaties which call for the U.S. government to provide for the quality education of American Indians and Alaska Natives, and,

Whereas, the National Congress of American Indians calls upon the Reagan Administration and U.S. Congress to enact legislation and budget appropriations which are more responsive to the educational needs of American Indians and Alaska Natives,

Therefore, the National Congress of American Indians at its 42nd annual convention in Tulsa, Oklahoma adopts the following Education Policy Position Paper:

I. JOHNSON-O'MALLEY: The U.S. Congress must fund the Johnson-O'Malley education programs for FY 1987 in the amount 32,177,000, which includes monies to serve 9,500 tribal students who are enrolled in tribal contract schools. The Johnson-O'Malley programs are cost effective, they promote tribal control of education and they are responsive to the needs of tribal children who are most in need, children who live on or near Indian reservations and Indian country, including Indian children living in California, Oklahoma and Alaska. The Johnson-O'Malley program derives its authority from the Snyder Act and should not be subject to the cutting-ax whim of any Administration. The recent attempt to abolish the time-tested and successful JOM programs as a revival of the termination policies of the early 1950s. This pattern of termination is evident in the recent closing of federal boarding schools in Oklahoma, Utah and Arizona, the massive transfer of BIA schools to the State of Alaska, the drastic cutback in Indian scholarships, the continuous attempts to transfer tribal students to white public schools,the refusal to implement the 27 BIA Education Policies (25 CFR 32), the refusal to permit tribal contract schools to utilize JOM monies and the Administration's refusal to recognize that education is a part of the trust responsibility to the federally-recognized tribes. NCAI vigorously objects to the Administration's plan to force the tribes to utilize exclusively Impact Aid and Title IV-A of the Indian Education Act, two programs that tribes cannot contract. Both Impact Aid and Title IV-A are controlled primarily by public school districts that, for the most part, are not controlled by Indian tribes nor people.

The NCAI is aware that H.R. 3011 as reported by the Senate Appropriations Committee contains "Hold Harmless" language that would maintain the Johnson O'Malley appropriations for seven (7) states with small Indian populations at the present or eighty five percent (85%) funding level while reducing the funding level for the remaining twenty (20) states with large Indian populations by approximately thirty seven percent (37%).

Said reduction and "Hold Harmless" language would be unfair to Indian Children and severely reduce services and programs that assist Indian Children in obtaining an equal educational opportunity as intended by the Johnson O'Malley Act.

The NCAI requests that the Congress eliminate the "Hold Harmless" language so that Indian Children will be served equally.

II. INDIAN EDUCATION ACT (TITLE IV): The U.S. Congress must provide an amendment to place the Part A category of Title IVunder a grant authority to Indian tribes. As it stands now, Title IV-A funds (with a minor exception in entitlement funds to 60-plus tribal contract schools), which comprise almost two-thirds of all the Title IV budget, are used exclusively by public schools which enroll Indian students. As the law now stands, the great majority of federally-recognized tribes cannot participate in the Title IV-A program, because they cannot contract for the Title IV-A Program.

The Office of Indian Education (OIE) in the U.S. Department of Education should make better use of its Title IV-B Indian Fellowship program. The nCAI is disturbed that the OIE returned $168,000 of Indian Fellowship Program funds to the U.S. Treasury at the end of FY 1983-84 and that $61,000 has been returned to date during FY 1984-85. In light of the large number of tribal students who are being denied BIA Scholarship Assistance, the OIE must use its available monies throughout the current academic year to eligible students in the same fields of study.

The Office of Indian Education should how the discutionary authroity to reallocate graduate fellowships throughout the regular academic year so that more eligible Indian students can be served.

On April 2, 1985, S. 830, a bill to set aside 25% of the monies appropriated for the Indian Education Act (Title IV) for Native Hawaiians, was introduced by Senators Melcher, Inouye and Matsunaga. There are no plans to increase appropriations accordingly; therefore the loss of 25% of the Title IV funds would have a devastating impact on Indian students. In addition, the intrusion of non-Indian populations into the Act would represent a serious infraction of the treaty responsibilities of the federal government to the federally-recognized tribes. While we sympathize with the educational plight of the Hawaiian Natives, we believe the answer to the problem rests with the enactment of an Hawaiian Education Act.

The Congress of the United States and the Administration provide Indian Education Act appropriations in 1981 funding level of $81,680,000 including funding for NACIE at $282,000. The Congress of the United States must amend Public Law 92-318, to provide "Indian Preference" employment policies for staffing the Title IV Indian Education Programs Office in the Department of Education.

III. TRIBALLY-CONTROLLED COLLEGES: NCAI supports a $11,342 million appropriation to meet operational costs for tribally-controlled colleges, which have an increased student enrollment of 67% while appropriations have declined by 20% since 1981.

We strongly encourage the Congress to fund the new endowment provision which was included in P.L. 98-192.

IV. BIA SPECIAL INDIAN GRADUATE PROGRAM: The NCAI membership, recognizing the critical need for Indian graduate education, urges increased and multi-year funding for the American Indian Scholarship (AIS) of Albuquerque, New Mexico. We urge an allocation of $1,460,500 for FY 1987, and an allowance for contract support funds administered by AIS. NCAI is distressed that there are 100 potential graduate students on the AIS waiting list who are not funded because of an insufficient allocation.

V. INMED: NCAI supports the 23-member tribally-appointed Advisory Board's request that INMED remain a line item in the Indian Health Service budget. INMED's retention rate of 80% for pre-professional students is impressive. NCAI strongly supports an extension of the four-year maxium eligibility limit for scholarships for health profession students. We recommend that H.R. 1426, Section 104 (a) and (b) the Indian Health Scholarships, clearly be revised to allow Indian students now receiving IHS Scholarships expanded eligibility to participate in other student financial aid programs offered through the HHS, the Department of Education and the Bureau of Indian Affairs. The current practice limits such IHS scholarship recipients to only IHS scholarships. This existing policy/rule may deter students from applying to any resource and may cause students not to complete their studies, given skyrocketing tuition and other costs. NCAI also encourages the IHS to be responsive to those health-related fields of study that tribes have determined to be of high priority.

VI. P.L. 98-511 REVISIONS AND IMPLEMENTATION: Since the U.S. Congress has passed technical amendments to P.L. 98-511 and the President has signed these into law as P.L. 99-89, the BIA should be compelled to implement these provisions by utilizing Indian task forces to develop regulations which fill facilitate this task. These provisions include: 1) forward funding for BIA and Contract Schools, ISEP revisions, 2) restrictions on school closures, 3) attendance boundaries, 4) control of facility maintenance funds by school personnel, 5) separate funding for school board training and related expenses, and 6) authority for agency superintendents for education to waive an appropriately determined portion of the rental rate for educators at BIA schools, subject to school board approval.

VII. BIA AND TRIBAL CONTRACT SCHOOLS: The President and the U.S. Congress should adopt legislation which has been introduced by the House and the U.S. Senate which amends Section 1128 of P.L. 95-561 and repeals Sections 288, 289, and 297 of 25 USC which will allow tribes and BIA schools to enroll children who are members of the federally-recognized tribes as determined under their own constitutions or ordinances, and will waive tuition payments for children of non-Indian employees for attendance at BIA operated schools.

The U.S. Department of Education must provide for a longer comment period of sixty additional days for the National Evaluation of Indian Controlled Schools to enable tribes to adequately respond to the glaring design flaws in the study. The study has failed to consider the alternative nature of Indian controlled schools, misinterpretation of significant data in achievement scores and attendance, and school costs.

VIII. INDIRECT COSTS LINE ITEM: The U.S. Congress must restore the separate line item in the Bureau of Indian Affairs education 638 contract budgets, in order to ensure that administrative cost funds remain a distinctive fiscal component supporting the contractor's administration of BIA contracted schools, JOM higher education and other programs. There must be BIA assurance of an equitable method of calculating contractor's administrative indirect costs.

IX. EARLY CHILDHOOD: The NCAI shares a deep concern for the future of young Indian children and belives that pre-school and early childhood education opportunies are essential to the future educational and economic success of the Indian child.

The NCIA is concerned that there are approximately 10,000 young Indian children who are not eligible for the Head Start Program and who are in need of pre-school services.

The Bureau of Indian Affairs has failed to comply with the House Committee on Interior Appropriations' directives to implement Bureau-wide pre-kindergarten opportunities for the young Indian child.

The NCAI supports House Interior Approriations Chairman Sidney R. Yates' effort to provide basic pre-kindergarten opportunities for the young Indian child. We demand that the Bureau of Indian Affairs work with NCAI and NTCA to develop pre-kindergarten regulations, to publish such regulations, to publish such regulations and to implement a Bureau-wide pre-school program with appropriate funding requests.

Additionally, the NCAI supports the Tribal Leaders Coalition for the Young Child, a network to promote pre-school services to all tribes.

X. HASKELL INDIAN JUNIOR COLLEGE: The NCAI demands, under the authority of the Snyder Act, the restoration of the $1 million which have been cut since the beginning of the Reagan Administration; that additional funds be appropriated to enable Haskell to become a four-year institution; that the governance of the college be by an intertribal board of regents selected by the tribes; and that all members of the federally-recognized tribes must be forever exempt from paying tuition to attend Haskell.

XI. GIFTED AND TALENTED PROGRAMS: The BIA should request $50,000 each for at least 12 tribes to begin gifted and talented programs. The ISEP formula should include 1.0 as a weighted student unit (WSU) for these programs. Contrary to BIA estimates, there may be at least 10,000 gifted and talented Indian children. Yet only 75 have been identified. Tribes, rather than the BIA, must develop appropriate criteria for the identification of these children.

XII. VOCATIONAL EDUCATION SET ASIDE: Two parts of the rules and regulations for the Indian and Native Program Section 103 (b) (1) (c) of the Carl Perkins Act (P.L. 98-524) cause NCAI concern: 1) the 65% trainee placement requirement, and 2) the requirement for private sector involvement in the operation of the project. Regarding the 65% requirement, no other population is subject to such restrictive requirments. The 65% requirement should be a commendable goal, not a requirement. The required private sector involvement is in opposition to the Congressional mandate of Tribal Self-Determination. The private sector should support but not operate vocational education programs.

XV. BIA EDUCATION ADVISORY BOARD: The BIA Office of Indian Education Programs should consult with the NCAI and the NTCA Advisory Committee on Education at least four times annually, in order to carry out the BIA responsibility for periodic and systematic consultation, as described in 25 CFR 32. The BIA/OIEP must be restrained from revising the 27 BIA education policies without tribal consultation.

XIV BIA HIGHER EDUCATION: Education for Indians is a trust responsibility of the federal government and BIA higher education scholarships should be cast as an entitlement. An additional appropriation of $24 million should be provided to support the 6,000 tribal students who were denied BIA assistance. During FY 1985, only 13,700 undergraduates and 300 graduate students were funded, while 6,000 Indian students were were accepted by universities were rejected from receiving BIA scholarships because insufficinet funds were requested.

We are concerned that there is confusing information about the number of students who are preparing themselves to meet the Tribes' great need for college prepared professionals.

In May of 1984, the National Center for Education Statistics stated there were 87,000 persons in college that self-identified as "Native Americans." We are at a loss to understand who these extra 73,000 self-identified students may be. We believe these 73,000 students must not be confused with the 14,000 federally-recognized Indian students now in college who are in need of full college support, plus the 6,000 eligible students who are not funded now.

XV. Bilingual Education: American Indian/Alaska Natives are under served by Title VII projects and existing Title VII funds must continue to be appropriated by the Congress to meet the language development needs of American Indian children in Bilingual education.

American Indian and Alaska Natives must continue to assert the inalienable rights of their children to a full education, preschool through college, in their natural languages as well as English, and in their own culture as well as the non-Indian

The National American Indian/Alaska Native Bilingual Task Force acts as advisory committee to the Office of Bilingual Education.

That NACIE endorses the actions of the American Indian/Alaska Native Bilingual Task Force and these recommendations which are intended to lead to the improvement of the condition of American Indian communities vis-avis bilingual education:

1. That bilingual/bicultural education for American Indian/Alaska Natives Communities be given a special priority by the Office of Education;

2. That any national conference planned by the Office of Bilingual Education involve the American Indian Bilingual/Bicultural Education Task Force in the planning and implementation phases of said conference;

3. That a Langauge Training Center be established which would train American Indians in their respective local communities to develop orthographies, reading and writing in their own native languages;

4. That OBEMLA make available necessary information on national priorities to the American Indian/Alaska Natives Task Force.

5. That NCAI is in support of tribes adopting language policies as part of their tribal codes.

Additionally the National Congress of American Indians because of its support for preservation of American Indian languages and supports bilingual education endorses the National Indian Bilingual Center which is the only one of the 16 regional multifunctional Service Centers so that a broader range of training and technical assistance needs can be met for projects and program serving bilingual American Indian and Alaska Native children and youth.

XVI: Attendance Boundaries:

The Bureau of Indian Affairs has imposed restrictive attendance boundaries without tribal consultation as required by law. These attendance boundaries diminish the rights and responsibilities of parents and tribal governments to choose the type of educational programs for their children. Local opposition to the attendance boundaries has been expressed through tribal resolutions and other means and has been completely ignored by BIA. The implementation of these boundary regulations by local Bureau officials has often been contrary to the wishes of the parents and has resulted in a loss of funding to the receiving school. NCAI demands that BIA comply with its policy regulations with regard to tribal consultation and parental choice and that present law and BIA regulations that dictate attendance boundaries be rescinded and that any future plans concerning this issue be done with complete tribal consultation and concurrence.

XVII: Vocational Rehabilitation Services:

(SEE ATTACHED)

RESOLUTION NO. T-86-83/ED

The National Congress of American Indians is concerned about disabled American Indians who could benefit from culturally relevant and meaningful vocational rehabilitation services.

Data has been developed by the Native American Research and Training Center at Northern Arizona University which indicates that the American Indian disabled population residing on reservations is the most underserved disabled group in the United States.

These figures indicate that, disabled American Indians who apply for state vocational rehabilitation services are less likely to be accepted as program clients, as well as being successfully rehabilitated.

Studies indicate that the rate of disabling conditions among American Indians is 1½ times higher than the National Average.

The Navajo Vocational Rehabilitation Program is an example of a proven tribally based vocational rehabilitation program which is successful in meeting the needs of disabled American Indians.

The National Congress of American Indians hereby strongly supports the continued funding of ongoing programs and to increase opportunities in establishing service delivery systems under Title I, Part D; Section 130 of the Rehabilitation Act (P.L. 95-602 as amended) by appropriating 2.5 million dollars in FY 1987.

The NCAI further requests the subcommittee on Slect Education of the House Education and Labor Committee and Subcommittee on the Handicapped of the Senate Labor and Human Resources Committee in their review of P.L. 95-602 to make provisions for program stability of ongoing programs under Section 130 of the Rehabilitation Act and increase opportunities for other Tribes and Tribal Organizations to participate in delivery of vocational rehabilitation services.

PROPOSED BY ELMER J. GUY, AN
NCAI MEMBER IN GOOD STANDING

○